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Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories

The occupied Syrian Golan

Report of the Secretary-General

Summary

The report has been prepared by the Office of the United Nations High Commissioner for Human Rights pursuant to General Assembly resolution 66/80, in which the Assembly requested the Secretary-General to report to the Assembly at its sixty-seventh session on the implementation of the resolution.

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1. The present report is submitted pursuant to General Assembly resolution 66/80.

2. On 15 June 2012, the Office of the United Nations High Commissioner for Human Rights (OHCHR), on behalf of the Secretary-General, addressed a note verbale to the Government of Israel referring to the above-mentioned General Assembly resolution and asking the Government to provide information on any steps that it had taken or envisaged taking concerning the implementation of the relevant provisions of the resolution. No reply had been received at the time of the preparation of the present report.

3. Also on 15 June 2012, OHCHR, on behalf of the Secretary-General, sent a note verbale to the Syrian Arab Republic and to all permanent missions to the United Nations in Geneva regarding General Assembly resolution 66/80, asking the Governments of the Member States to provide information on any steps that they had taken or envisaged taking concerning the implementation of the relevant provisions of the resolution. In addition to the response from the Permanent Mission of the Syrian Arab Republic, replies were also received from the Permanent Missions of Algeria, Argentina, Qatar and the Sudan.

4. On 21 June 2012, the Government of the Syrian Arab Republic recalled that the international community had strongly condemned the Israeli occupation of the Golan since 1967, requesting the withdrawal of Israel from the occupied Syrian Golan. The Syrian Arab Republic also stated that General Assembly resolution 66/80 confirmed Israel's failure to withdraw from the Syrian Golan and its disregard for the resolutions of the Security Council and the Assembly. In resolution 66/80, the Assembly reiterated that Israel's annexation of the Syrian Golan in 1981 and its subsequent imposition of Israeli laws, jurisdiction and administration on the occupied Syrian Golan was null and void, and without international legal effect, as affirmed by the Security Council in resolution 497 (1981). The Syrian Arab Republic regretted to note that after 45 years of Israeli occupation and despite repeated requests from the international community for its complete withdrawal from the occupied Syrian Golan, Israel continued to occupy the Golan, pursued daily repressive practices and persisted in its flagrant violations of international law and norms with impunity. The Syrian Arab Republic reaffirmed its desire to continue to work and cooperate with the United Nations with a view to ending that occupation. On the basis of that understanding, the Syrian Arab Republic stated that United Nations resolutions continued to be the reference for a just and comprehensive resolution of the problems in the Middle East. According to the note verbale, President Bashar Al-Assad had declared on more than one occasion that the Syrian Arab Republic was willing to resume peace negotiations on the same basis on which the Madrid peace process had been started in 1991. It also noted that the Syrian Arab Republic had declared in all international forums its full commitment to relevant international resolutions and had called for their implementation, in particular Security Council resolutions 242 (1967), 338 (1973) and 497 (1981), and for implementation of the principle of land for peace, in order to ensure the full withdrawal by Israel from all of the occupied Syrian Golan to the line of 4 June 1967.

5. In its note verbale, the Syrian Arab Republic reiterated its condemnation of several violations and actions taken by Israel, which were reported in the 2011 report to the General Assembly (A/66/400). The Syrian Arab Republic reiterated its

strong condemnation of human rights violations committed by Israel in connection with the killings of peaceful demonstrators on 15 May 2011 and 5 June 2011 (ibid., para. 5). Similarly, it reiterated its condemnation of the Israeli campaigns promoting settlement-building in the occupied Golan as well as new tourist settlements, noting again that those actions demonstrated Israel's disregard for peace and for the decisions of the Security Council and the Assembly (ibid., para. 6). The Syrian Arab Republic also reiterated its rejection of the Knesset decision dated 22 October 2010, mandating a referendum on any agreement that would lead to the withdrawal of Israel from the occupied Syrian Golan and East Jerusalem (ibid., para. 9). It also recalled that it had previously deplored Israeli confiscation in December 2010 of water resources from the Masada Lake, in violation of articles 5 and 8 of Security Council resolution 465 (1980) (ibid., para. 8). In addition, the Syrian Arab Republic renewed its request to the Secretary-General, the United Nations High Commissioner for Human Rights, the President of the Human Rights Council and the President of the International Committee of the Red Cross to bring pressure on Israel to ensure that Syrian prisoners detained in its jails are kept in more humane health conditions, recalling the cases of Syrian nationals Majed Shaer and his son Fidaa (ibid., para. 10).

6. In addition to the information reported in the previous report to the General Assembly, the Syrian Arab Republic, in its note verbale, condemned the abduction by Israeli forces of a Syrian minor, Mohammed Khalid Ahmed, while he was on the Syrian side of the ceasefire line. The Syrian Arab Republic also strongly condemned the decision of Israel in June 2011 to build a separation wall to the east of Majdal al-Shams in the occupied Syrian Golan, under the pretext that this would prevent Palestinians and Syrians from crossing the ceasefire line to access the occupied town of Majdal al-Shams. The construction of the wall (4 kilometres long and 8 meters high) started in July 2011.

7. In its note verbale, the Syrian Arab Republic condemned all Israeli practices and actions in the occupied Syrian Golan that constituted a flagrant violation of Security Council resolution 497 (1981) and General Assembly resolution 66/225 entitled "Permanent sovereignty of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources". The Syrian Arab Republic called on Member States to refuse, in accordance with their obligations under international law, the importation of natural and manufactured products from the occupied territories, and to put pressure on Israel so that it complied with its obligations under international law. The Syrian Arab Republic condemned the fact that in March 2012, Israel had prevented Syrian farmers from transporting their crops from the occupied Golan to the Syrian Arab Republic, in violation of the agreement between the International Committee of the Red Cross and Israel. According to the note verbale, that arbitrary denial of passage had caused considerable material losses to the Syrian farmers who were, as a result, unable to find an alternative market for their crops. The Syrian Arab Republic called upon the Secretary-General to intervene in order to ensure Israel's respect for its agreement with the International Committee of the Red Cross and the non-recurrence of such an unjustified action.

8. The Syrian Arab Republic renewed its request to the Secretary-General, the United Nations High Commissioner for Human Rights, the President of the Human Rights Council and the President of the International Committee of the Red Cross to

put pressure on Israel to rescind its decision to bar visits by citizens from the occupied Syrian Golan to their homeland, the Syrian Arab Republic, through the Quneitra crossing, taking into consideration the material, mental and physical suffering caused to Syrian citizens by that Israeli practice, which also contravened the Geneva Conventions and all international humanitarian instruments and norms. It was stated that on 27 March 2012, Israel had denied passage from the occupied Syrian Golan to the Syrian Arab Republic to a Syrian delegation of religious leaders seeking to attend the funeral of Ahmed Alhijry. The Syrian Arab Republic stressed that Israeli practices in the occupied Syrian Golan had exceeded all legal and moral bounds, citing, as a recent example, the house arrest imposed on two-year-old Fahd Choucair, under the pretext that he had been born outside Israel while his parents were studying in the Syrian Arab Republic.[1]

9. The Syrian Arab Republic concluded its note verbale by stating that reaching sustainable peace and stability in the Middle East would require the adoption of measures ensuring the enforcement of all relevant international resolutions, without discrimination and selectivity, and the implementation of the Geneva Conventions.

10. On 3 July 2012, the Permanent Mission of Qatar replied to the note verbale and reaffirmed its support for resolutions requesting the withdrawal of Israel from all Arab occupied territories, including the occupied Syrian Golan. Qatar stated that all measures taken by Israel aimed at changing the physical character and the legal status of the occupied Syrian Golan were null and void, and constituted a flagrant violation of international law and the Fourth Geneva Convention relative to the Protection of Civilians in Time of War, as well as a threat to regional and international peace and security. In its note verbale, Qatar also recalled that this position had been similarly adopted by the League of Arab States in all summits and reiterated in a March 2012 resolution.[2] In that resolution, the League of Arab States reaffirmed its support of the Syrian Arab Republic's requests for the withdrawal of Israel from the occupied Syrian Golan to the line of 4 June 1967. That resolution also called on the United Nations, the Security Council and the Human Rights Council to guarantee the respect by Israel of the Geneva Conventions and the International Covenant on Civil and Political Rights, including the right to family visits for Syrians.

11. On 5 July 2012, the Permanent Mission of Argentina replied to the note verbale recalling that it strongly supported, through press releases from the Ministry of Foreign Affairs as well as in many international forums, Syrian claims over the occupied Syrian Golan, and reaffirming the need to respect international law and relevant resolutions of the United Nations, in particular Security Council resolution 497 (1981). Argentina also considered that the occupied Syrian Golan fell within the scope of Security Council resolution 242 (1967) and therefore emphasized the inadmissibility of the acquisition of the territory by force. Argentina concluded its note verbale by stating that it did not recognize any of the legislative or administrative measures and actions taken by Israel in the occupied Syrian Golan, in application of the above-mentioned resolutions.

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[1] In 2009, during the twelfth session of the Human Rights Council, the Permanent Mission of Israel circulated a note verbale providing a response to that allegation and denying the house arrest (A/HRC/12/G/10).

[2] Resolution adopted at the 137th regular session of the League of Arab States, on 10 March 2012.

12. On 9 July 2012, the Permanent Mission of the Sudan replied to the note verbale, stating that it did not recognize any of the legislative and administrative measures and actions taken by Israel in the occupied Syrian Golan.

13. On 10 July 2012, the Permanent Mission of Algeria replied to the note verbale, stating that all legislative and administrative measures and actions taken or to be taken by Israel to change the physical character and the legal status of the occupied Syrian Golan were null and void, constituted a flagrant violation of international law and the Geneva Convention of 12 August 1949 relative to the Protection of Civilians in Time of War and had no legal effect. Algeria reaffirmed that it did not recognize any of those measures.

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Item 19 of the provisional agenda*
Follow-up to and implementation of the outcome of the 2002 International Conference on Financing for Development and the 2008 Review Conference

Follow-up to and implementation of the Monterrey Consensus and Doha Declaration on Financing for Development

Report of the Secretary-General**

Summary

Pursuant to General Assembly resolution 66/191, the present report provides an annual assessment of the state of implementation of the Monterrey Consensus and the Doha Declaration on Financing for Development. The recent developments are presented under each of six thematic areas: mobilizing domestic financial resources for development; mobilizing international resources for development: foreign direct investment and other private flows; international trade as an engine for development; increasing international financial and technical cooperation for development; external debt; and addressing systemic issues: enhancing the coherence and consistency of the international monetary, financial and trading systems in support of development. Other recent developments related to strengthening of the financing for development intergovernmental follow-up process are presented in a section on "Staying engaged".

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** The present report was prepared in consultation with staff from the major institutional stakeholders involved in the financing for development process. Responsibility for its contents, however, rests solely with the United Nations Secretariat.

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I. Mobilizing domestic financial resources for development

1. Economic growth and domestic resource mobilization are intertwined. Thus, the pace, balance and sustainability of global economic recovery will have significant implications for domestic resource mobilization in developing countries. Global growth slowed down markedly in 2011 and is likely to remain below potential in most regions in 2012. World gross product is projected to grow by 2.5 per cent in 2012, following growth of 2.7 per cent in 2011.[1] Faced with weakening external demand and increased global uncertainties, developing countries are projected to see notable growth moderation to 5.3 per cent in 2012.

2. High unemployment remains a constraint for domestic resource mobilization. There remains a deficit of around 50 million jobs in comparison with the pre-crisis situation. Concerted measures are needed to address the existing jobs deficit and provide employment for the over 80 million people expected to enter the labour market in the near future. In particular, youth unemployment rates have increased in about 80 per cent of advanced economies and in two thirds of developing economies.[2] Many workers in developing countries continue to face social challenges such as unemployment, poor pay, vulnerable job conditions and a lack of access to any form of social security. Globally, there has been little progress in the elimination of gender-based discrimination in the labour market. The labour participation rate stood at 51 per cent in 2010 (52 per cent in 2002) for women, compared with 77 per cent (78 per cent in 2002) for men.

3. The post-crisis recovery of savings and investment rates was mixed among income and regional groups. The average savings rate (gross savings/gross domestic product (GDP)) in low- and middle-income countries, which had dropped to 29 per cent in 2009, has since increased to 30 per cent. In 2010, domestic savings increased significantly in sub-Saharan Africa (from 15.5 per cent in 2009 to 17.3 per cent in 2010), recovered somewhat in Latin America and the Caribbean (from 19.2 per cent in 2009 to 20.8 per cent in 2010) and remained high (46.44 per cent) in East Asia and the Pacific. At the same time, gross capital formation[3] has moved to pre-crisis levels in low- and middle-income countries to just over 29 per cent in 2010 from 28 per cent in 2009.[4] The impact of the crisis was much lower on developing countries than on countries of the Organization for Economic Cooperation and Development (OECD), which show a 3 per cent dip in 2009 and a tepid recovery in 2010 by less than 1 per cent (from 17.3 per cent to 18.1 per cent).

4. Domestic environments that are conducive to private economic activity provide the basis for mobilizing both foreign and local investment. Many developing countries have made progress in this respect, especially in the area of legal and regulatory reform, improving the provision of information, as well as promoting the ease of doing business. For example, in sub-Saharan Africa, where starting and running a business is still costlier and more complex than in any other part of the world, 36 of 46 countries improved their regulatory environment for

[1] *World Economic Situation and Prospects 2012*, midyear update (E/2012/72). The IMF *World Economic Outlook* Update of 16 July 2012 had a slightly higher growth projection for developing countries in 2012 (5.6 per cent).

[2] International Labour Organization and International Institute for Labour Studies, *World of Work Report 2012: Better Jobs for a Better Economy* (Geneva, 2012).

[3] Gross capital formation represents gross domestic investment.

[4] World Bank, *World Development Indicators 2012* (Washington, D.C., 2012).

domestic businesses in 2010/11 — a record number since 2005. Worldwide, 125 economies implemented 245 reforms making it easier to do business in 2010/11, 13 per cent more than in the previous year.[5]

5. The effects of the world financial and economic crisis on tax revenues are striking. Global tax revenues as a percentage of GDP saw a significant decrease in the period 2007-2009 by more than 2 per cent (from 15.6 per cent in 2007 to 13.5 per cent in 2009). The drop extended to all income groups but was particularly large in high-income countries. Major reasons for drops in tax revenues include the adverse effects of the crisis on economic activity (affecting levels of employment, sales of goods and services, etc.) and developments in tax legislation (affecting tax rates, the tax base, thresholds, exemptions, etc.).[6] Modernized, equitable, effective and more progressive tax systems can help to increase tax revenue and reduce inequalities.

6. The financial sector has deepened significantly (as measured by the ratio of bank assets to GDP) in most countries over the past decade, despite setbacks in several (mostly developed) economies during the crisis. However, in most low-income countries, bank credit to the private sector has actually decreased in relative terms.[7] Despite greater resources, banks in low-income countries follow a conservative approach and remain reluctant to lend to the private sector. Challenges remain to mobilize domestic resources for productive investment. Possible avenues include greater diversification of domestic banking sectors, as well as the use of public funds, including donor money, to provide technical assistance and capacity-building to help borrowers develop bankable project proposals and to provide risk mitigating measures for investors in the form of credit enhancements and guarantees.

7. Financial inclusion, namely, greater access to a wide range of financial services by poor and vulnerable population groups, microenterprises and small- and medium-sized enterprises, is beneficial for development and domestic resource mobilization. Inclusive finance represents a more holistic approach than microcredit and includes savings, payment, insurance and other services tailored specifically to the needs of low-income borrowers and savers. Recently published indicators[8] show that financial inclusion rises steadily with income. The percentage of people aged 15 and older with an account at a formal financial institution is 24 per cent for low-income, 28 per cent for lower middle-income, 57 per cent for upper middle-income and 89 per cent for high-income countries. Moreover, there are significant disparities along gender lines. Worldwide, 55 per cent of men report having an account at a formal financial institution, while only 47 per cent of women do. The gender gap is largest among lower middle-income economies as well as in South Asia and the Middle East and North Africa.[8] Policies to advance financial inclusion should therefore remain high on the international agenda.[9]

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[5] World Bank, *Doing business 2012: Doing business in a more transparent world* (Washington, D.C., 2012).

[6] World Bank, *World Development Indicators 2011* (Washington, D.C., 2011).

[7] World Bank, Financial structure data set, 2011.

[8] World Bank, Global Financial Inclusion (Global Findex) database, 2012.

[9] Special Advocate of the Secretary-General for Inclusive Finance for Development, annual report to the Secretary-General, September 2011.

8. Illicit capital flows continue to drain developing countries of important resources for development. The United Nations Model Double Taxation Convention between Developed and Developing Countries, which was updated by the Committee of Experts on International Cooperation in Tax Matters in 2011, includes important provisions aimed at curtailing cross-border tax evasion and avoidance and capital flight through improved exchange of information (art. 26). Moreover, illicit capital flows are frequently intimately linked to large-scale corruption. It is therefore necessary to continue combating corruption at all levels, including through effective legal instruments such as the United Nations Convention against Corruption,[10] which entered into force in December 2005 and currently has 160 parties.

II. Mobilizing international resources for development: foreign direct investment and other private flows

9. Private capital flows to developing countries have exhibited signs of volatility. Following a strong revival in the aftermath of the world financial and economic crisis, net private capital flows to developing countries underwent a downturn during the latter part of 2011. Owing to growing fears among portfolio investors about the sustainability of public finances in Europe, there occurred a general "flight to safety". In total, net private capital flows to developing countries are estimated to have fallen from about $447 billion in 2010, to about $438 billion in 2011.[11] Some stability appeared to have returned during the early months of 2012, as risk aversion among investors eased in line with improving prospects for the eurozone and the global economy at large. However, the prospects for private capital flows to developing countries over the coming months are mixed. On the one hand, stronger economic fundamentals in emerging economies, combined with continuing economic problems in many advanced economies, should serve to attract investors. On the other hand, signs of an economic slowdown in some of the leading emerging economies, combined with renewed concerns about the global economy, could lead to a sharp increase in risk aversion in international financial markets, giving rise to large outflows of private capital.

10. Foreign direct investment (FDI) remains a major component of private capital flows to developing countries and is estimated to have amounted to about $376 billion in 2011. Those flows are concentrated in a few developing countries, although there have been signs of greater diversification. Moreover, there are significant regional differences. The large majority of FDI to developing countries continues to be channelled to Asia and Latin America, while flows to Africa, although higher than a decade ago, remain limited. In recent years, outward FDI from developing and transition economies has become increasingly significant (with a large proportion thereof directed towards other developing and transition economies). However, their share in global FDI outflows declined from 31 per cent in 2010 to 26 per cent in 2011. There was a significant decline in outward FDI from Latin America and the Caribbean, as foreign affiliates of some of their transnational companies repaid loans to their parent firms in the region. Nevertheless, the overall

[10] United Nations, *Treaty Series*, vol. 2349, No. 42146.

[11] International Monetary Fund (IMF), *World Economic Outlook* database, April 2012 edition.

levels of FDI flowing from developing and transition economies remained high from a historical perspective.[12]

11. While FDI tends to be more stable than other types of private capital flows into developing countries, there are concerns that its changing composition, owing to a shift from equity to debt components, may be making it more volatile.[13] Where a significant portion of FDI is intracompany debt, as opposed to green-field direct investments, the parent company can recall this debt on short notice. In this respect, it has been claimed that the proportion of short-term and volatile flows in FDI has increased and that part of the growth in FDI flows during the past two years has been made for the purpose of short-term gains. For instance, some of the intracompany funds received from the parent company can sometimes be invested for speculative purposes and may be easily liquidated. The growing proportion of short-term and volatile flows contained in FDI could reverse more quickly than expected in an uncertain economic and financial climate.

12. While portfolio flows to developing countries rebounded earlier this year, there exists the possibility of a renewed slowdown. Adverse developments in the global economy could affect both equity and bond flows. Furthermore, some developing economies may be particularly vulnerable to adverse market sentiment, owing to concerns that include decelerating growth rates, high fiscal and external deficits and, in some instances, political instability. Adding to these concerns, the earlier surge in capital flows to developing countries that took place between 2009 and 2011 is argued to have increased the amount of potential hot money in emerging markets that may depart suddenly. Moreover, the strong flows into corporate debt markets during the recent years have been accompanied by a rapid expansion in private credit in some developing economies, thereby heightening their vulnerability to rapid deleveraging or a sudden reversal in capital flows.[14]

13. In a similar vein, the gradual recovery in commercial bank lending to developing countries is also susceptible to the fragility in economic and financial conditions. Recent figures from the Bank for International Settlements suggest a decline in cross-border claims on emerging market economies from banks located in other countries during the latter part of 2011.[15] As this was only the second such decline in almost three years, it may be indicative of deleveraging by commercial banks and is likely to continue in the near future. While the impact on cross-border bank flows is likely to be greatest in emerging Europe and central Asia, which have the most direct exposures to distressed European banks,[16] there is nevertheless a risk that the deleveraging process could become disorderly and lead to a more generalized cutback in credit that would affect a wider range of developing countries. Such a development may in turn trigger significant portfolio outflows from emerging economies, affecting the stability of their currencies and capital markets. A tightening in lending standards by international banks may also serve to

[12] United Nations Conference on Trade and Development (UNCTAD), *Global Investment Trends Monitor*, No. 8 (24 January 2012).

[13] *World Investment Report 2011: Non-Equity Modes of International Production and Development* (United Nations publication, Sales No. E.11.II.D.2).

[14] IMF, *Global Financial Stability Report: The Quest for Lasting Stability* (Washington, D.C, April 2012).

[15] Bank for International Settlements, "International banking and financial market developments", *Quarterly Review* (June 2012).

[16] World Bank, *Global Economic Prospects: Uncertainties and Vulnerabilities* (January 2012).

affect trade finance, which in many instances, comprises a large share of short-term debt. There are signs that commercial banks have been cutting trade finance exposures and/or reducing their provision of trade finance for smaller markets. There is a risk that a sharp downturn in the global economy could lead to a freeze in trade finance.[16]

14. The increasing volatility of private capital flows and their vulnerability to changing sentiments have rendered it increasingly important for countries to have the scope to employ measures to effectively manage volatile short-term capital flows. The policy instruments that may be employed by countries to manage international capital flows include macroeconomic policies, macroprudential measures, and other forms of capital account regulations, including capital controls. There has been renewed interest in capital account regulations and discussion of the conditions under which they would be effective. During the past few years, a number of countries (including Brazil, Indonesia, Peru, Thailand and the Republic of Korea) introduced capital account regulatory measures to manage volatile short-term capital flows. The effectiveness of capital account regulations would ultimately depend upon the specific circumstances of a country, including its economic situation, the quality of the existing regulatory framework, the structure and persistence of inflows and the design and implementation of capital account regulations.

15. Officially recorded remittances to developing countries are estimated to have totalled $372 billion in 2011, representing a year-on-year increase of about 12 per cent. The leading recipients of remittances among developing countries were India, China, Mexico and the Philippines. Moreover, remittances make up a larger share of GDP in small- and low-income countries. For instance, in 2010, they amounted to 31 per cent of GDP in Tajikistan, 29 per cent of GDP in Lesotho, and over 20 per cent of GDP in a number of other countries, including Moldova, Nepal and Samoa.[17] Given the important role that remittances play in the economies of a number of developing countries, it is important that source and destination countries collaborate to reduce the transaction costs of remittances and, where possible, to relax legal and funding barriers to remittances and other financial flows by migrants.

III. International trade as an engine for development

16. International trade has experienced marked volatility since the onset of the world financial and economic crisis. After dropping by 9.9 per cent in 2009,[18] global trade expanded by 13.1 per cent in 2010. In 2011, high-income economies experienced a marked deceleration, in which GDP growth halved from 3 per cent in 2010 to 1.6 in 2011. The corresponding decrease in global demand translated into a 6.6 per cent global trade rate of growth in 2011.[18] Trade in developing countries and the member countries of the Commonwealth of Independent States fell (-7.4 per cent), relative to trade in developed economies (-15.1 per cent) in 2009 and recovered faster.[19] Consequently, their share of global exports rose from 39 per cent

[17] World Bank, *Migration and Development Brief*, No. 18 (23 April 2012).

[18] *World Economic Situation and Prospects 2012* (United Nations publication, Sales No. 12.II.C.2), table 1.1.

[19] World Trade Organization (WTO), "Trade growth to slow in 2012 after strong deceleration in 2011", *World Trade 2011, Prospects for 2012*, table 1, p. 5. Press release, PRESS/658/Rev.1 May 10 2012.

in 2008 to 47 per cent in 2011, in contrast with previous global crises, where developing economies had proved to be particularly vulnerable to external shocks.

17. Uncertainties associated with the European sovereign debt crisis, as well as volatile commodity prices and unstable capital flows, imply the possibility of further deceleration in trade growth for 2012. In addition, despite the pledge from G20 members to resist protectionism, to restrain from new measures until 2014, and to roll back measures taken, only 18 per cent of all the measures introduced since the beginning of the crisis have been removed.[20] A successful conclusion to the World Trade Organization (WTO) Doha Round of multilateral trade negotiations with an ambitious, balanced and development-oriented outcome would help to restrain these protectionist trends and ensure a faster recovery of the global economy.

18. At the Eighth WTO Ministerial Conference, held in December 2011, ministers recognized that multilateral trade negotiations were at an impasse and that there was a need to more fully explore different negotiating approaches, compatible with the principles of inclusiveness and transparency. Lately, negotiations in WTO have centred on a possible "early harvest" of issues of importance to developing countries and least developed countries, such as facilitating accession of least developed countries, full implementation of the 2005 WTO decision on providing duty-free, quota-free market access for least developed countries, operationalization of the Least Developed Country Services Waiver, extension of Agreement on Trade-Related Aspects of Property Rights (TRIPS) flexibilities and eliminating export subsidies and trade, distorting domestic support to cotton production in developed countries.

19. Several issues that have emerged as being important for a more balanced and effective multilateral trading system are not a part of the Doha Agenda, such as the governance of global supply chains, commodity price volatility and trade-related aspects of climate change. Market transparency has to be enhanced to mitigate excessive price volatility in commodity markets, which can have particularly adverse effects on developing countries heavily dependent on commodity exports. Likewise, measures should be taken to curb risks to food security in food-importing countries. The proliferation of bilateral and regional trade agreements could be made more compatible and coherent with the multilateral system, perhaps through plurilateral agreements under WTO auspices.[21]

20. Even though the share of least developed countries in global trade increased to 1.14 per cent in 2011, more needs to be done to enhance their integration into the global economy. The share of the value of exports from developing countries and least developed countries imported free of duty in developed markets reached 80 per cent in 2004[22] and has remained at that level since then.[23] To boost the participation of least developed countries in world trade, developed countries should focus on the full implementation of commitments contained in the 2005 WTO decision to provide duty-free, quota-free market access to least developed country products, along with simplified rules of origin, lower administrative costs and elimination of non-tariff barriers affecting least developed country exports. South-South trade

[20] WTO, "Report on G-20 trade measures", 31 May 2012.

[21] IMF, "The WTO Doha trade round — unlocking the negotiations and beyond", November 2011.

[22] Excluding arms and oil.

[23] Millennium Development Goals Gap Task Force Report 2012 (to be issued).

expanded by 32 per cent in 2010, absorbing 49 per cent of developing countries' exports, suggesting a potential dynamic market for least developed countries, including further duty-free, quota-free access.

21. Although preferential market access is still an important factor of developing countries enterprises' competitiveness, trade policies are no longer sufficient because of the current nature of the global supply chains business model. In effect, competitiveness in these chains is determined by a wide range of factors, especially by the quality of policies influencing the overall business environment. Least developed countries and other low-income countries are often confronted with substantial disadvantages, as implementing these policies would require substantial resources that are often lacking.[24] Accordingly, national policies to support businesses, as well as to generate incentives for technology transfer and assimilation, are required to allow least developed countries and low-income countries to participate at higher value-added levels, and thus contribute more to their development.

22. Aid for Trade is one of the instruments that should be boosted to improve trade infrastructure, diversify export capacity and support an increase in the technological content of exports. Aid for Trade commitments reached $45.3 billion in 2010, despite the fiscal and economic difficulties in many OECD countries. This amount represents a further increase of 12 per cent over 2009 levels. The outlook for Aid for Trade, however, is bound to be affected by the continuing tight government budgets in OECD countries, which in turn will put pressure on aid levels in the coming years. Aid for Trade to least developed countries reached $13.7 billion in 2010, up 14 per cent from 2009 levels. Least developed countries now account for 30 per cent of total Aid for Trade. However, disbursements amounted to just $9 billion.

23. Existing trade finance programmes need to be expanded to reach all low-income countries and ensure that trade finance is offered at an affordable cost. The Basel III framework introduced additional requirements that effectively classify trade finance among risky assets, even though data show that trade finance is a safe, low-risk financial activity. WTO and the World Bank raised the issue of the "potential unintended consequences of the Basel frameworks of prudential regulation for the finance industry on the availability of trade finance, in particular for low-income countries" with the Basel Committee.[25] In turn, the Basel Committee introduced some flexibilities to address these issues, but contingent trade finance exposures are still treated in the same way as lending, which adversely affects small businesses, small countries and small banks, especially in Africa.

24. Trade-related aspects of climate change are one of the key issues for developing countries. A greening global economy can open new markets with trade opportunities for all countries, which could generate employment. Particularly in rural areas, a green economy, together with information and communications technologies, has the unique power to connect people to global markets. Yet, this usually requires improved production processes, investment in new technology and

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[24] Alessandro Nicita, and others, *Global Supply Chains: Trade and Economic Policies for Developing Countries*, Advance Unedited Version, *Policy Issues in International Trade and Commodities Study Series* (UNCTAD, Geneva 2011).

[25] WTO, press release, "Lamy outlines benefits of changes to Basel framework for trade finance", 26 October 2011.

efficient trade infrastructure, all of which are often more costly to implement in developing countries.

25. However, some policies to support a green economy can restrict access to markets, distort international competitiveness and, in some cases, be incompatible with multilateral trade rules. Accordingly, a better understanding of the rules and potential impacts of green economy policies would be needed.

IV. Increasing international financial and technical cooperation for development

26. In 2011, members of the Development Assistance Committee of OECD provided $133.5 billion of net official development assistance (ODA), representing 0.31 per cent of their combined gross national income. This marks a decrease of 2.7 per cent compared with 2010 and was the first fall in global ODA since 1997, if one excludes the years of exceptional debt relief.[26] Within total net ODA, aid for core bilateral projects and programmes (i.e., excluding debt relief grants and humanitarian aid) fell by 4.5 per cent in real terms.[27] There were reductions in ODA budgets of 16 Development Assistance Committee donors, including the largest ones such as the United States of America, the European Union, France and the United Kingdom of Great Britain and Northern Ireland. Countries such as Austria, Belgium, Greece, Japan and Spain saw double-digit cuts in their ODA in 2011. Looking ahead, prolonged recessions in several Development Assistance Committee donors may further squeeze aid budgets and pressure may mount on other donors in the coming years.[28]

27. Donors renewed their commitment to provide at least 0.15 to 0.20 per cent of their gross national income as aid to least developed countries in the Istanbul Programme of Action for the Least Developed Countries for the Decade 2011-2020,[29] adopted at the Fourth United Nations Conference on the Least Developed Countries, held in Istanbul, in May 2011. The Programme called on all donors to achieve the 0.15 per cent target by 2015. However, only nine donors have thus far reached the target of 0.15 per cent. Moreover, having amounted to $27.7 billion in 2011, ODA to least developed countries was almost 9 per cent lower than in 2010. Similarly, the commitments made at the Group of Eight (G8) 2005 summit in Gleneagles to increase aid to Africa by $25 billion were not met in the target year of 2010. Whereas bilateral aid to sub-Saharan Africa was $28.0 billion in 2011, representing a fall of 0.9 per cent in real terms compared with 2010, aid to the African continent increased by 0.9 per cent to $31.4 billion, as donors provided more aid to North Africa following the political upheavals in the region.

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[26] OECD, "Development: aid to developing countries falls because of global recession", 4 April 2012.

[27] ODA data from the OECD-Development Assistance Committee website.

[28] OECD-Development Assistance Committee, "Outlook on Aid: Survey on Donors' Forward Spending Plans 2012-2015", preliminary findings.

[29] *Report of the Fourth United Nations Conference on the Least Developed Countries, Istanbul, Turkey, 9-13 May 2011* (United Nations publication, Sales No. E.11.A.1, chap. II).

28. Following these shortfalls, the Council of the European Union reaffirmed its commitment to achieve all their development aid targets, including the collective 0.7 per cent ODA to gross national income target, by 2015.[30] Furthermore, the European Union has reiterated its commitment to policy coherence for development and has identified its key strategic priorities. The European Union will focus on governance and inclusive sustainable growth as the two overarching pillars of development cooperation, follow a more differentiated approach to countries at varying levels of development and concentrate on a maximum of three sectors per country. The mix and level of aid will be adapted according to the needs, capacity, impact, and progress in commitments to and the record on human rights, democracy and the rule of law, and according to the ability to conduct reforms and to meet the needs of the people.

29. Leaders at the Fourth Conference on the Least Developed Countries made a renewed call for support for agriculture, along with building productive capacity in developing countries. The sector received $5.4 billion, equivalent to 6.1 per cent of sector-allocable aid in 2010, up from 5.1 per cent in 2009. Food aid and food security assistance is a separate category of aid, which totalled $1.4 billion in 2010. According to the G8 Deauville Accountability Report, $22.5 billion was pledged in total for the L'Aquila Initiative, some of which should focus on sustainable agricultural development. The report highlighted that 22 per cent had already been disbursed and 26 per cent was firmly on track to be disbursed, as at May 2011.[31]

30. Progress on the implementation of the Paris Declaration on Aid Effectiveness, reinforced in the Accra Agenda for Action, set for 2010 has been slow, with only 1 of 13 targets (coordinated technical cooperation) met. Some progress has been made on individual indicators, especially those related to the obligation of recipient countries. Moreover, findings shared with the Development Cooperation Forum,[32] underscore that the establishment of mutual accountability mechanisms has so far been the indicator with the least progress, and further emphasize that aid is becoming more fragmented. Therefore, the lessons from the Fourth High-level Forum on Aid Effectiveness (29 November-1 December 2011, Busan, Republic of Korea) and the Development Assistance Committee's own recommendations on good pledging practices should be fully implemented. The endorsement of the Busan Partnership for Effective Development Cooperation represents the willingness of countries to deal with development in a more holistic way. In the Busan outcome document, leaders further recognized the importance of complementary United Nations processes and invited the Development Cooperation Forum to play a role in consulting on the implementation of agreements reached in Busan.

31. The volume of South-South cooperation had risen sharply from $8.6 billion, or 6.9 per cent of global aid flows, in 2006 to $15 billion, or 9.5 per cent, in 2008 and was estimated to have reached $20 billion in 2010. Most of the resources come in the form of bilateral programmes of project funding. This form of cooperation lays

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[30] Council of the European Union, Council conclusions, "Increasing the impact of EU development policy: an agenda for change", 3166th meeting of the Foreign Affairs Council, Brussels, 14 May 2012.

[31] G8 Deauville Accountability Report, "G8 commitments on health and food security: state of delivery and results".

[32] Based on surveys in 105 countries by the Department of Economic and Social Affairs/United Nations Development Programme in 2010 and 2011 for the Development Cooperation Forum.

emphasis on national sovereignty, common interests, the motives of solidarity and partnership rather than compassion, except in cases of emergency assistance, and embraces a broader concept of development effectiveness. A distinctive characteristic of South-South development cooperation is an integrated approach that packages commercial transactions in trade, investment and loans with unidirectional support, for example, in education, health and infrastructural aid programmes, which is guided by domestic growth experiences.

32. Progress has been made in promoting innovative financing mechanisms to raise additional resources for development. It is estimated that such mechanisms have generated from $37 billion to $60 billion for development assistance in the period 2002-2011, depending on which mechanisms are deemed to be innovative financing (see A/66/334, para. 9). There are no standardized reporting systems to monitor flows raised through innovative financing. Some of these mechanisms tend to involve more effective use of aid rather than additional resources mobilization, such as frontloading ODA, which may reduce ODA in the future at the expense of other development needs. Also, resources thus raised are mostly used to prioritize financing global public goods rather than domestic development needs and have been rather insignificant relative to the overall external financing, even in the poorest countries. There is some evidence that global health funds have drained human resources out of national health services and increased administrative burdens. In addition, they may have contributed to further fragmentation of the aid architecture by adding new players and delivery mechanisms. For instance, earmarking for specific purposes, as is done by vertical funds in the health sector, can limit the domestic policy space for using the resources for nationally defined priorities such as strengthening domestic health services.[33]

33. An array of potentially large innovative sources of development financing have been proposed, but not been agreed upon by the international community. Important ones include taxes on financial and currency transactions and on greenhouse gas emissions, as well as issuance of special drawing rights for developmental use. Any resources raised through new mechanisms should be aligned to recipient countries' development strategies and priorities.

V. External debt

34. At present, sovereign debt vulnerability has become a global phenomenon, threatening global recovery, with intensifying strains in the euro area and fragilities in the global financial system. This time, the debt situation in emerging and developing countries does not portend a systemic problem, as was the case in earlier episodes of debt distress, default and contagion, but the epicentre of the problem is located in some countries in Europe. Bailouts of sovereign States and banks by the public sector so far in this debt crisis, and in the aftermath of the world financial and economic crisis, have reached unprecedented historical highs, putting a strain on public funds. Yet, the outcomes remain uncertain.

35. The dollar value of total external debt of developing countries increased by 11 per cent between 2010 and 2011: in upper middle-income countries, total debt

[33] *World Economic and Social Survey 2012: In Search of New Development Finance* (United Nations publication, Sales No. E.12.II.C.1).

stock increased by 12 per cent, while in low-income and lower middle-income countries total external debt increased by 10 and 8 per cent, respectively. In 2011, the ratio of external debt service to exports increased slightly in the aggregate for developing countries, led by the increase in lower middle-income countries, for which debt service increased by 34 per cent, while exports increased by only 20 per cent.

36. In low-income countries, debt relief initiatives, through Heavily Indebted Poor Countries initiatives (HIPCs) and the Multilateral Debt Relief Initiative, further reduced low-income countries' ratio of debt service to exports to 4.8 per cent in 2011. Thirty-six out of 39 HIPCs have reached the decision point, 33 of which have reached the completion point, receiving almost 35 per cent of their 2010 GDP in debt relief. Yet, the full participation of all creditors, particularly a number of smaller multilateral, non-Paris Club bilateral and private creditors, remains to be secured. In December 2011, an end-2010 indebtedness criterion was added for eligibility for assistance under the HIPC Initiative.

37. Although the debt ratios of developing countries do not reveal a generalized problem, vulnerabilities remain in some regions and countries, notably the Caribbean region, where eight countries had external public debt to GDP higher than 65 per cent in 2011, two of which were classified as in high risk of debt distress, and five were in moderate risk of debt distress as at 3 May 2012.[34] Eight low-income countries that benefited from the HIPC Initiative and the Multilateral Debt Relief Initiative, and six non-HIPCs, are also in high risk of debt distress. Of the four countries in debt distress, two are interim between decision and completion point, one is at pre-decision point and one is non-HIPC.

38. Emerging and developing economies, as well as many developed economies, remain at risk from the fallout of the eurozone crisis. The outlook for the global economy is tepid. Food and commodity prices are likely to continue to show high instability. The increase in money supply in developed countries, especially in the United States of America and the eurozone, owing to quantitative easing in recent years, has already generated major spillover effects on developing countries that saw highly volatile capital inflows, exchange rates and asset prices over the past two years.[35]

39. Reserve accumulation has been at the core of the ability of upper middle-income countries to weather recent crises. Yet, this success has to be balanced with the important opportunity costs of holding high levels of resources as reserves.[36] In 2011, developing countries' international reserves increased to $1.1 trillion,[37] bringing the buffer against contagion to 13.6 months of imports. In contrast, the growth of imports in low-income countries was faster than reserve accumulation and thus the precautionary cushion fell to 3.8 months of reserves in 2011. For developing countries, in 2011, the ratio of short-term debt as a percentage of reserves was around 20 per cent, with low-income countries at a lower 9 per cent. To maintain sustainable sovereign debt ratios and weather the effects of impending

[34] IMF, List of low-income countries debt sustainability analyses for Poverty Reduction Growth Trust-eligible countries, as of 3 May 2012.

[35] IMF, *World Economic Outlook*, April 2012, executive summary, p. xvii.

[36] The vast majority of reserves are invested in United States Treasuries and other low-yielding sovereign papers.

[37] *World Economic Situation and Prospects 2012*, p. xi.

global risks in economic growth, many emerging and developing economies would need to ensure that macroeconomic policies are part of a transparent countercyclical framework combined with strengthened macroprudential financial and capital-account regulation to mitigate the impact of volatile commodity prices and capital inflows.

40. Large provisions of financial resources, including country provisions, are needed to sustain solvency and liquidity backstop to prevent a run on the financial system and on sovereign debt. In the current setting, the International Monetary Fund (IMF) acts as a quasi-lender of last resort to address liquidity problems (not insolvency), often in concert with the multilateral development banks and other official creditors. The new IMF instruments, such as the Flexible Credit Line and Precautionary Credit Line, have moved the Fund to be more like a lender of last resort. Yet, there is tension in this role, as the distinction between liquidity and solvency, while clear in theory, is often very opaque in practice. Moreover, concerns remain that liquidity support can lead to both debtor and creditor moral hazard, as debtors defer needed adjustments, hoping for an improvement in economic conditions, and lenders do not correctly price in risk. Banks may postpone recognizing losses on their balance sheets, since the infusion of public funds may temporarily reduce the volume of assets to be declared as impaired assets. Consequently, the size of the "haircut", that is, the debt write-off granted to the sovereign debtor country, can turn out lower than would have been otherwise possible.

41. The present crisis situation shows again the complexities that the Fund faces when it contemplates the right time for an exit from a country where the sustainability of the debt burden remains a challenge. Sometimes the lack of an acceptable alternative in terms of an orderly exit gives IMF little choice but to forbear. For the debtor Government, it is often politically not feasible to announce that they will restructure their debt, so that incentives are present to gamble for resurrection.

42. Legally binding standstills could give the domestic and international official sector breathing space to find a solution and prevent the mass exodus to the exit that triggers a "rollover" crisis and/or a rush to the courthouse. Standstills could be included in bond contracts to set out the contractual terms for non-payment of interest and suspension of payments.[38] This would prioritize financial stability, prevent cross-border default and acceleration and bring creditors together. However, it remains open whether a fixed time limit on a standstill would help or hurt the sovereign attempt to restructure. Another option would be a statutory approach with a possible amendment of the IMF Articles of Agreement.

43. The financial architecture should aim at improving the efficiency of global capital markets by reducing losses faced by creditors, sovereign borrowers and others adversely affected by the uncertainty surrounding potentially disruptive debt scenarios. IMF has a critical role as lender of last resort but, absent a better framework for the timely, orderly restructuring of sovereign debt, it is less effective in assisting its members to strike a judicious balance between financing and

[38] Currently, the contractual terms in most sovereign bonds have a grace period of 3-13 days, which are not meant to operate as a standstill but to resolve any technical difficulties in making payments, and certainly not to facilitate a restructuring.

adjustment. Consequently, a timely reform of the architecture for debt restructuring is needed.[39]

VI. Addressing systemic issues: enhancing the coherence and consistency of the international monetary, financial and trading systems in support of development

44. The international community has continued its efforts to reform the international monetary and financial system and architecture in the key areas of macroeconomic policy coordination, financial regulation, multilateral surveillance, sovereign debt, global financial safety net and governance structures at the Bretton Woods institutions (see A/67/187). The reform is geared towards improving the functioning, stability and resilience of the international monetary and financial system and to enable the international community to respond to global risks in a more coherent, effective and cooperative fashion. However, serious systemic shortcomings persist, which, among other factors, have a bearing on the capacity of developing countries to mobilize resources for development. It is crucial to continue and reinforce efforts at enhancing the coherence and consistency of international monetary, financial and trading systems in support of development.

45. The coordination of financial and economic policies at the international level is critical to safeguard global financial stability. In the wake of the global crisis, it has been a priority of the Group of 20 (G20) to set up a framework for economic policy coordination. G20 leaders, at their summit in Cannes, France, in November 2011, adopted the Cannes Action Plan for Growth and Jobs, which aims at addressing short-term vulnerabilities in the financial system and strengthening medium-term foundations for growth, such as through fiscal consolidation and boosting domestic demand in countries with large current account surpluses in order to advance global rebalancing. Building on this process, G20 leaders, at their summit in Los Cabos, Mexico, in June 2012, adopted the Los Cabos Growth and Jobs Action Plan. However, it is argued that more comprehensive and decisive international cooperation is necessary to tackle pressing financial and economic challenges.[40]

46. There is a need for a stronger and more inclusive framework of global economic governance. Current institutional arrangements have proved to be inadequate in addressing a range of pressing development issues, including reducing global economic imbalances and advancing a multilateral trade agreement. It is essential that the system of global economic governance become more effective, transparent and legitimate. Consideration should also be given to better incorporating regional arrangements into the governance framework (see A/66/506). The General Assembly recognized the need for an inclusive, transparent and effective multilateral approach to managing global challenges, and reaffirmed the central role of the United Nations in ongoing efforts to find common solutions to such challenges (see General Assembly resolutions 65/94 and 66/256).

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[39] Report of the Expert Group Meeting on Sovereign Debt Restructuring, available at http://www. un.org/esa/ffd/msc/2012Egm_debt/index.htm.

[40] *World Economic Situation and Prospects 2012*, midyear update (E/2012/72).

47. In view of the accumulation of significant amounts of foreign reserves by some developing countries, including, in part, for the purpose of self-insurance against crises, there have been suggestions to strengthen the role of special drawing rights of IMF within the global reserve system. The issue of broadening the special drawing right currency basket remains under consideration,[41] which might eventually increase the acceptance of special drawing rights and help to strengthen their role as an international reserve asset.

48. Steps have been taken to further strengthen financial regulation and oversight in response to weaknesses exposed by the global financial crisis. The focus at the international level is on implementing the Basel III framework, strengthening the regulation of large financial institutions and expanding the regulatory perimeter to the shadow banking system and certain financial innovations. The success of international financial regulatory reform depends on the timely, comprehensive and consistent implementation of these policies. Moreover, measures in a number of regulatory areas remain work in progress and require further detailing. Emerging markets and developing countries have expressed concerns about the complexity of Basel III, which would pose challenges to their capacity to implement the new regulations, monitor implementation and address potential unintended consequences for their financial systems.[42] Furthermore, there are concerns over the impact of new rules on development, e.g., with regard to possible adverse effects of Basel III on trade finance.

49. Efforts have continued to strengthen the capacity of multilateral surveillance to identify risks to global financial and economic stability in a timely and comprehensive manner. A priority in this process has been to attach more importance to cross-border and cross-sectoral linkages. IMF has taken a number of steps to strengthen the quality and coverage of its surveillance activities, including through novel spillover reports. These reports stressed the importance of financial channels for transmitting global shocks and, hence, the positive effect of policies tackling financial stress.[43] IMF also cooperates closely with the G20 countries in their Mutual Assessment Process on whether their policies support balanced and sustainable global growth. In addition, work is under way at the Fund to further reform and broaden its surveillance approach, as suggested by the IMF 2011 Triennial Surveillance Review and the related Managing Director's Action Plan. The International Monetary and Financial Committee, at its meeting held in April 2012, welcomed recent initiatives on Fund surveillance, and agreed that the current surveillance framework should be significantly enhanced.[44]

50. Financial instabilities arising from the sovereign debt crisis, in particular in the eurozone, might further spread to other parts of the world economy and tarnish the prospects of developing countries. Various policy interventions at the national and regional level have been taken to reduce public debt, albeit with mixed results. Fiscal austerity measures are projected to reduce budget deficits in some advanced economies; however, premature fiscal austerity measures can slow down economic

[41] IMF, "Criteria for broadening the SDR currency basket", 23 September 2011.

[42] Financial Stability Board, "Identifying the effects of regulatory reforms on emerging market and developing economies: a review of potential unintended consequences", 19 June 2012.

[43] IMF, "Consolidated spillover report, implications from the analysis of the systemic-5", July 2011.

[44] International Monetary and Financial Committee, communiqué of the twenty-fifth meeting, 21 April 2012.

growth to a degree that may worsen public debt. As a structural measure, international financial stability could further improve through the establishment of international statutory mechanisms to both facilitate timely debt restructuring and to provide greater clarity of the rules by which sovereign debt restructuring will occur. Moreover, current vulnerabilities have yet again shaken the confidence in credit rating agencies, which are subject to a number of regulatory initiatives to improve their transparency, risk assessment and oversight.

51. Amid continuing financial instabilities, steps have been taken to strengthen the global financial safety net. In 2012, a number of countries committed to provide an additional $456 billion to IMF for crisis prevention and resolution. The Fund also continued to reform its liquidity and emergency lending facilities, such as by introducing the Precautionary and Liquidity Line. The international financial safety net has continued to evolve towards a multilayered structure comprising global, regional and bilateral components. The overall size of the collective safety net, however, remains small in comparison with reserves accumulated by national central banks. Efforts to further strengthen crisis lending facilities should therefore focus on enhancing the different layers of the financial safety net, strengthening the cooperation of IMF with regional arrangements and key central banks, and increasing coordination among these various mechanisms.

52. Both IMF and the World Bank have taken important steps to enhance their governance structures and to increase the voting power of emerging market and developing countries. The Fund approved quota and governance reforms in 2010. The reforms will not come into force until three fifths of IMF members with 85 per cent of voting rights ratify the change. The International Monetary and Financial Committee, therefore, has reaffirmed the urgency of making the reforms effective by the 2012 Annual Meetings.[44] In addition, a comprehensive review of the current IMF quota formula will be concluded by January 2013. The second phase of governance reform for the World Bank Group,[45] agreed upon in April 2010 and approved in April 2011, has helped in making the World Bank more open, transparent and accountable.[46] Increased voting power for low- and middle-income countries and an open and transparent senior leadership selection process that is based on merit irrespective of nationality and gender remain important objectives. In that context, developing countries welcomed the fact that for the first time in the history of the World Bank there was an open process for the selection of the President.[47]

VII. Staying engaged

53. The General Assembly held its fifth High-level Dialogue on Financing for Development on 7 and 8 December 2011 under the overall theme "The Monterrey Consensus and Doha Declaration on Financing for Development: status of implementation and tasks ahead". The two-day event included a series of plenary meetings, at which ministers and high-level officials made formal statements. The second day featured three interactive multi-stakeholder round tables on the

[45] Phase I added a twenty-fifth Board seat for Africa, and increased the basic votes component of total voting power.

[46] Development Committee, communiqué, 21 April 2012.

[47] G24, communiqué, 19 April 2012.

following topics: (a) "The reform of the international monetary and financial system and its implications for development"; (b) "The impact of the world financial and economic crisis on foreign direct investment and other private flows, external debt and international trade"; and (c) "The role of financial and technical development cooperation, including innovative sources of development finance, in leveraging the mobilization of domestic and international financial resources for development". The round tables were followed by an informal interactive dialogue on "The link between financing for development and achieving the internationally agreed development goals, including the Millennium Development Goals". The Dialogue resulted in a summary by the President of the General Assembly (see A/66/678).

54. The Economic and Social Council held its Special high-level meeting with the Bretton Woods institutions, WTO and UNCTAD on 12 and 13 March 2012, under the overall theme "Coherence, coordination and cooperation in the context of financing for development". The United Nations Secretary-General addressed the meeting. Following a short opening plenary with brief statements by the President of the Council and the heads of relevant intergovernmental bodies, the meeting included informal thematic debates on the following topics: (a) "Promoting sustained, inclusive and equitable economic growth, job creation, productive investment and trade" and (b) "Financing of sustainable development". The outcome of the meeting is contained in the summary by the President of the Council (see A/67/81-E/2012/62).

55. On 17 and 18 May 2012, the President of the General Assembly and the Secretary-General jointly convened a high-level thematic debate on the "State of the world economy and finance in 2012" to explore ways of improving the overall global economic and financial situation and to discuss its impact on development efforts and social processes. The event was attended by several heads of State and Government, ministers in charge of foreign affairs, finance and economic development, senior officials of the relevant international agencies and regional development banks, as well as representatives of civil society, the business sector and academia. The two-day event included plenary sessions and four round tables on the following topics: (a) "Combating unemployment, creating jobs, especially for women and youth, and addressing poverty"; (b) "Reducing debt vulnerability, managing inflation/deflation"; (c) "Limiting commodity price fluctuations, increasing production, trade and investment"; and (d) "Increasing stability, predictability and transparency in the financial sector". A joint letter dated 22 June 2012 from the President of the General Assembly and the Secretary-General highlighted key messages and enclosed a full summary of the discussions.

56. In the outcome document, entitled "The future we want", world leaders at the United Nations Conference on Sustainable Development, held in Rio de Janeiro, Brazil, from 20 to 22 June 2012, recognized the need for significant mobilization of resources from a variety of sources and the effective use of financing, in order to give support to developing countries in their efforts to promote sustainable development. The Conference agreed to establish an intergovernmental process under the auspices of the General Assembly to assess financing needs, consider the effectiveness, consistency and synergies of existing instruments and frameworks, and evaluate additional initiatives, with a view to preparing an effective sustainable development financing strategy. An intergovernmental committee, comprising 30 experts nominated by regional groups, with equitable geographical

representation, will implement this process, concluding its work by 2014 (see General Assembly resolution A/66/288, annex, paras. 254-257).

57. The 2012 substantive session of the Economic and Social Council, under agenda item 6 (a), "Follow-up to the International Conference on Financing for Development", featured a panel discussion on the topic "Innovative mechanisms of financing for development". The Council further adopted a draft resolution (E/2012/L.26) that contains a number of provisions aimed at strengthening the financing for development follow-up process. In particular, the Council recalled paragraphs 255, 256 and 257 of the outcome document of the United Nations Conference on Sustainable Development and, in this regard, stressed the need to reinforce coherence and coordination and avoid duplication of efforts with regard to the financing for development follow-up process. Furthermore, the Council recalled the earlier decisions of the General Assembly to review the modalities of the financing for development follow-up process and to consider the need to hold a follow-up financing for development conference by 2013. More information is posted at www.un.org/esa/ffd.

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Item 69 of the provisional agenda*
Right of peoples to self-determination

Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly, in accordance with Commission on Human Rights resolution 2005/2, the report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination.

* A/67/150.

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Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Summary

The Working Group begins by presenting an overview of its activities during the period under review. It also provides an update on recent activities of mercenaries and private military and security companies. As the latest incidents in Côte d'Ivoire and the situation in Libya show, mercenarism remains a serious problem that requires attention. The Working Group notes that activities of private military and security companies have continued to evolve and that these contractors are involved in an ever-expanding range of activities. The Working Group remains concerned about the lack of transparency and accountability of these companies and about the absence of an international regulatory framework to monitor their activities. Lastly, the Working Group reviews developments in attempts to regulate private military and security companies, including at the international and national levels, and industry-led initiatives to raise standards. While the Working Group is encouraged to see recognition of the need for greater regulation, it is of the view that more needs to done. It looks forward to working with States to deepen understanding of the impact on human rights of private military and security companies and the most effective means of ameliorating that impact and ensuring accountability for violations.

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I. Introduction

1. Pursuant to its mandate, the Working Group on the use of mercenaries as a means of violating human rights and the exercise of the right of peoples to self-determination has continued to monitor mercenaries and mercenary-related activities in all their forms and manifestations, and to study the effects on the enjoyment of human rights of the activities of private companies offering military assistance, consultancy and security services on the international market. In accordance with Human Rights Council resolution 18/4 and General Assembly resolution 66/147, the Working Group submits the present report to the Assembly. It covers the period following the submission of the previous report (A/66/317) in August 2011.

2. The events of the past year demonstrate that the involvement of mercenaries in areas of instability and armed conflict remains of concern. In the western part of Côte d'Ivoire, along the border with Liberia, mercenaries were reported to have been involved in several attacks against civilians. In Libya, the extent of the former regime's use of mercenaries remains unclear and several thousand foreigners have reportedly been detained as mercenaries.

3. The activities of private military and security companies have increasingly diversified. With the drawdown of foreign military troops in Afghanistan and Iraq, private military and security company support for these activities is likewise diminishing. Nevertheless, private military and security companies are involved in other activities in these countries, including providing protection to embassies and other diplomatic missions, humanitarian organizations and the United Nations. Private military and security companies have also found another market for their services in the maritime industry, with armed guards increasingly being used on-board ships, in particular off the coast of Somalia. Lastly, private military and security companies are increasingly becoming part of what is known as the "peace industry", as illustrated by their activities in Africa and their use in support of United Nations missions.

4. The lack of accountability for human rights violations committed by private military and security companies in Afghanistan and Iraq was the initial impetus for international, regional, national and industry-led initiatives to regulate the industry. While these efforts stem from the use of private military and security companies in wartime, the ever-expanding reach of an industry that has the potential to have a serious negative impact on human rights means that regulatory efforts must also come to grips with their use outside armed conflict.

5. From 13 to 17 August 2012, representatives of 65 States met at the second session of the open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies. They considered principles, main elements and draft text proposed by the Working Group. The open-ended intergovernmental working group noted that discussions had identified existing gaps and/or areas of concern in relation to the promotion and protection of human rights regarding the activities of the private military and security company industry, which had led to a consensus that there was a need for further discussion. It recommended the continuation of discussions for a further two years on particular aspects of the impact on human rights of private military and

security companies and on the possibility of an international regulatory framework, including the option of elaborating a legally binding instrument on the regulation, monitoring and oversight of the activities of such companies, in addition to other approaches and strategies, including international standards.

6. At the national level, the Working Group has noted the development of legislation and regulations, in particular with regard to maritime security companies. At the industry level, the process for developing mechanisms for implementing the International Code of Conduct for Private Security Service Providers is under way. The Working Group welcomes these developments because they provide the building blocks of an international regulatory framework for private military and security companies.

7. The Working Group examines these issues in more detail below. In section II, it provides an update on its activities, while in section III it reports on the recent activities of mercenaries. In section IV, it describes the activities of private military and security companies. In section V, it covers the regulatory efforts under way at various levels regarding such companies and, in section VI, it presents conclusions and recommendations.

8. A new member from the Western European and other States, Gabor Rona (United States of America), was appointed by the President of the Human Rights Council on 30 September 2011, during the eighteenth session of the Council.

II. Activities of the Working Group during the past year

9. In accordance with its usual practice, the Working Group held three regular sessions during the reporting period: two in Geneva (from 24 to 28 October 2011 and from 12 to 16 March 2012) and one in New York (from 30 July to 3 August 2012). It continued to receive and review reports regarding the activities of mercenaries and private military and security companies and their impact on human rights, in addition to deciding on appropriate action and consulting representatives of States and non-governmental organizations. During its sixteenth session, in New York, the Working Group also convened a day-long meeting with experts in international law and the regulation of private military and security companies to consider the impact of changes in the industry and other initiatives on the text of the draft convention previously proposed by the Working Group. It also convened a half-day meeting of non-governmental organizations involved in the sphere of business and human rights to discuss synergies between efforts to implement related voluntary frameworks. In addition to the industry initiative specific to the private military and security company industry (the International Code of Conduct for Private Security Providers), the following frameworks were discussed: the Guiding Principles on Business and Human Rights adopted by the Human Rights Council (A/HRC/17/31, annex), the Voluntary Principles on Security and Human Rights,[1] the Organization for Economic Cooperation and Development Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas,[2] the Maastricht Principles on

[1] Available from www.business-humanrights.org/ConflictPeacePortal/Specialinitiatives/VoluntaryPrinciples.

[2] Available from www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/46740847.pdf.

Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights[3] and section 1502, on conflict minerals, of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[4]

A. Country visits

10. The Working Group has requested invitations to visit Côte d'Ivoire, Libya and Somalia. Its planned mission to Libya in May 2012 was postponed owing to difficulties in arranging meetings and security concerns. The Working Group remains committed to visiting Libya, as proposed to the Government, in October 2012. It also awaits the positive responses of the Governments of Côte d'Ivoire and Somalia to its requests.

B. Communications

11. During the period under review, the Working Group sent a communication to the Government of the United States requesting information on specific legislative matters and various court cases involving private contractors. The Working Group expresses thanks to the Government for its detailed reply, which reflects an important aspect of the cooperation of Governments with regard to the Working Group's mandate.

C. Other activities of the Working Group

12. The Chair-Rapporteur of the Working Group, Faiza Patel, participated from 13 to 17 August 2012 as a resource person in the above-mentioned second session of the open-ended intergovernmental working group. Before the session, the Working Group submitted a detailed paper in which it set out its position that there were gaps in international law relating to the activities that could be properly performed by private military and security companies and to the specific content of States' general obligations under human rights and humanitarian law regarding such companies. In the light of those gaps and the transnational nature of the private military and security company industry, the Working Group argued that an international convention was the most effective solution to the challenge of regulating private military and security companies.

13. Over the past year, the Working Group has, on several occasions, engaged in discussions with the Department of Safety and Security regarding the development of United Nations policies on the Organization's use of armed private security companies. The Working Group appreciates the Organization's efforts to develop a human rights-compliant policy framework for the procurement and use of such companies. On 28 August 2012, the Working Group provided its written comments on the draft United Nations security policy manual on armed private security companies, the United Nations Security Operations Manual and the guidelines on the use of armed services from private security companies. It reiterated its view,

[3] Available from www.icj.org/dwn/database/Maastricht%20ETO%20Principles%20-%20FINAL.pdf.

[4] Available from www.sec.gov/about/laws/wallstreetreform-cpa.pdf.

expressed during its discussions with the Under-Secretary-General for Safety and Security on 1 August 2012, that the framework could be strengthened by further mainstreaming human rights in the Organization's policy and operational documents.

14. The Working Group has undertaken to conduct a survey of national regulatory frameworks relevant to private military and security companies. For the purposes of the study, a private military and/or security company is defined as a corporate entity that provides, on a compensatory basis, military and/or security services by physical persons and/or legal entities. This research will assist in identifying best practices, provide a basis for research by stakeholders and will inform the report of the Working Group to the Human Rights Council at its twenty-fourth session, in 2013. The results of this comprehensive study and analysis will be made publicly available on the section on the Working Group of the website of the Office of the United Nations High Commissioner for Human Rights.

15. The Working Group initiated the survey by requesting information on relevant national legislation from Member States through a letter sent on 9 May 2012, followed by a reminder letter on 26 June. The Working Group is grateful to all those Member States that have submitted information and is looking forward to further responses in the coming months. The Working Group also contacted international and regional organizations that might have access to information on private military and security company legislation to obtain their input.

16. The Working Group is cooperating with the Geneva Centre for the Democratic Control of Armed Forces and the University of Denver in collecting information on national legislation. It will also carry out its own research through specialized websites and direct outreach to relevant Government officials to obtain private military and security company legislation that is not readily available. Initially, the Working Group will focus on the African continent.

17. On 31 January 2012, as part of a public consultation process, the Working Group submitted extensive comments on a Swiss draft law on the provision of private security services abroad. The approach taken in the draft law is analysed in detail in the report of the Working Group to the Human Rights Council at its twenty-first session (A/HRC/21/43) and discussed in section V.C below.

18. In December 2011, the Working Group joined an amicus curiae brief submitted by Human Rights First to the United States Court of Appeals for the Fourth Circuit in the cases of *Al-Shimari v. CACI International, Inc.* and *Al-Quiraishi v. L-3 Services, Inc.*, in which it was argued that contractors accused of international human rights violations, in this case torture, should not be exempted from civil liability in United States courts on the grounds that they were performing combatant activities. On 11 May 2012, the appeals court dismissed the appeal by the contractors and referred the case back to the district courts for further fact-finding.

19. On 30 March 2012, the Working Group submitted comments on the draft Charter of the Oversight Mechanism for the International Code of Conduct for Private Security Service Providers.

20. In addition, individual members of the Working Group carried out the following activities:

(a) The Chair-Rapporteur participated in the annual joint seminar of the United Nations Office at Geneva and the Geneva Centre for the Democratic Control

of Armed Forces convened on 7 December 2011 on the subject of the privatization of security;

(b) From 30 May to 1 June 2012, the Chair-Rapporteur participated in a conference convened at the Sié Chéou-Kang Center for International Security and Diplomacy at the University of Denver, where she discussed current regulatory efforts and continuing challenges relating to the activities of private military and security companies;

(c) Patricia Arias participated in a regional workshop for North-East and Central Asia on the Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict (A/63/467-S/2008/636, annex), held on 12 and 13 October 2011 in Ulaanbaatar. She gave a presentation on activities of private military and security companies in the scenario of the use of force, their impact on human rights, risks and challenges;

(d) Elżbieta Karska participated in a side event of the thirty-first International Conference of the Red Cross and Red Crescent, held in Geneva from 28 November to 1 December 2011, entitled "Protecting civilians in armed conflict: beyond the Montreux Document — international developments in private military and security company regulation". She gave a presentation on gaps in international human rights and humanitarian law in relation to accountability for violations of international law involving private military and security companies;

(e) On 28 March 2012, Mr. Rona participated as a resource person in the second session of the Committee on Enforced Disappearances, during which the Committee held consultations on the definition of non-State actors and their involvement in enforced disappearances, including issues of responsibility and accountability.

III. Update on mercenary activities

21. The Working Group is concerned about the continuing activities of mercenaries along the border of Côte d'Ivoire and Liberia and about the inability of the relevant authorities effectively to investigate and prosecute reported cases of human rights violations. It is currently preparing a letter to the relevant Governments about those activities. The Working Group also remains concerned about the alleged use of mercenaries in the conflict in Libya and their detention in the aftermath of the conflict.

22. On 30 November 2011, the former President of Côte d'Ivoire, Laurent Gbagbo, was transferred to the detention centre of the International Criminal Court in The Hague, charged with four counts of crimes against humanity for acts committed during the post-election violence in Côte d'Ivoire. The acts forming the basis of the charges were allegedly committed by the former regular armed forces of the Gbagbo regime, reinforced by pro-Gbagbo youth militia and mercenaries.

23. The removal of Mr. Gbagbo notwithstanding, mercenaries continue to pose a serious human rights and security problem in Côte d'Ivoire and their activities should be tackled systematically and comprehensively. Several reported incidents during the past year highlight this need.

24. On 13 April 2011, the Liberian authorities captured the notorious Liberian mercenary, Isaac Chegbo (also known by his noms de guerre "Bob Marley" or "Child Could Die"), who allegedly helped to orchestrate two massacres in which more than 120 men, women and children were killed in and around Bloléquin, Côte d'Ivoire, on 22 and 25 March 2011 (S/2011/757, para. 33). Chegbo reportedly acknowledged that he had been hired as a mercenary to fight the new regular armed forces, as created on 17 March 2011, and to fight as a mercenary in support of pro-Gbagbo forces (S/2012/448, paras. 62-63). That admission notwithstanding, the Liberian authorities failed to prosecute him and the Monrovia Circuit Court C released him on bail on 1 February 2012. The Working Group notes with concern that, the attempts of the Panel of Experts on Liberia to obtain clarification notwithstanding, it remains unclear whether the charges against Chegbo were dropped or whether he was released on bail and the charges are pending.

25. In January 2012, the Liberian police arrested 73 Ivorians and 1 Liberian identified as a mercenary recruiter. They were suspected of planning an attack on Côte d'Ivoire. In its report, the Panel of Experts on Liberia indicates that the County Attorney of Grand Gedeh did not properly investigate the charges and precipitously decided to release all 74 detainees on 20 February 2012 (ibid., paras. 67-77, and S/2012/186, para. 32).

26. A third incident occurred on 24 April 2012, when a group of some 20 men attacked the Ivorian village of Sakré. According to the Panel of Experts on Liberia, the attackers were Ivorians and Liberians aiming to create instability and loot property. Seven civilians were killed and two injured. Several houses were destroyed and more than 3,000 civilians fled to nearby villages. The Ivorian armed forces succeeded in capturing four of the attackers, all Ivorians, who are currently in custody (S/2012/448, paras. 78-83).

27. The Working Group is particularly concerned about reports that armed militias hostile to the Government of Côte d'Ivoire have been recruiting and training Liberian children between the ages of 14 and 17 to carry out cross-border raids.[5]

28. In June 2012, seven United Nations peacekeepers were killed in Côte d'Ivoire. In its press statement on the incident, the Security Council expressed deep concern at the prevailing insecurity in western Côte d'Ivoire and the border area and continued cross-border movements of armed elements, including militias and mercenaries.

29. It appears that, to date, no national-level strategy has been developed in Côte d'Ivoire or Liberia to tackle the issues identified by the Security Council. The largely uncontrolled cross-border movement of armed elements, possibly including mercenaries, poses serious risks to the stability of the region and to the human rights of the populations living in the border areas (S/2012/186, paras. 25 and 27).

30. The Minister for Human Rights and Civil Liberties of Côte d'Ivoire met the Working Group in March 2012 and indicated that his Government was prepared to receive a country visit. On 25 June, the Working Group reiterated its previous request to visit in 2012.

[5] Human Rights Watch, "Liberia: Ivorian Government foes wage, plot attacks — investigate, prosecute war criminals from Côte d'Ivoire conflict in Liberia", 6 June 2012. Available from www.hrw.org/news/2012/06/06/liberia-ivorian-government-foes-wage-plot-attacks.

31. In November 2011, Saif al-Islam Qadhafi, the fugitive son of the former leader of Libya, who had been accused of involvement in mercenary activities by the International Criminal Court, was captured. In February 2012, the Security Council voted unanimously to refer the matter to the Court, on the basis of the arrest warrant issued by the latter. The Government of Libya rejected the surrender request, however, causing the Prosecutor of the Court to request the Court to report Libya to the Council.

32. On 17 March 2012, the Mauritanian authorities arrested the Qadhafi-era intelligence chief, Abdullah al-Senussi, who reportedly orchestrated the recruitment and operations of mercenaries in Libya. Mauritania has taken the position that it will conduct its own investigation before considering extradition requests from Libya, France and the International Criminal Court.

33. Beyond the responsibility for mercenary recruitment borne by high-level officials of the Qadhafi regime, a major issue that remains unresolved in Libya is the status of a number of foreign fighters, who primarily come from other parts of Africa and who fought alongside the Qadhafi forces. In its March 2012 report (A/HRC/19/68), the International Commission of Inquiry on Libya, established on 25 February 2011 by the Human Rights Council to investigate alleged violations of international human rights law in Libya, reiterated its view that, while it was clear that fighters of foreign descent had fought alongside Qadhafi's forces, it was unclear whether those fighters fell within the definition of "mercenary" under the International Convention against the Recruitment, Use, Financing and Training of Mercenaries or under the Convention for the Elimination of Mercenarism in Africa. The main reason for that uncertainty was the lack of information about the terms under and purpose for which they were contracted.

34. Among the categories of fighters that the Commission found would probably not be categorized as mercenaries were: an organized group of Sudanese fighters who were brought in by the Qadhafi Government; a group of Tuareg fighters who were recruited from various regions of Libya; and various Libyan nationals or residents who were originally from Chad, Mali or the Niger.

35. The Commission of Inquiry also noted that the terms "foreigners" and "mercenaries" were used by the interviewees interchangeably to describe persons with dark skin who had taken part either in the conflict or in suppressing demonstrations against the Qadhafi regime.

36. Although it is far from clear that the foreign fighters in Libya were in fact mercenaries, they are being held as such at various facilities around the country. The Working Group is concerned that, as reported by the Commission of Inquiry, the *thuwar* (anti-Qadhafi forces) have been involved in the arbitrary arrest and enforced disappearance of perceived Qadhafi loyalists, security officers, alleged mercenaries and members of the former Government, and that detainees have been arrested without a warrant, without being told the reasons for their arrest, and without a reasonable suspicion that they have been individually involved in criminal activity.

37. The Working Group is furthermore concerned that, according to the Commission, a number of detainees are being held outside any legal framework in unacknowledged centres. Lastly, the Working Group notes the concerns expressed by the Commission regarding the conditions of detention of those fighters, including the maltreatment that is still taking place in centres under the control of local

military councils and security committees and the fact that access to family members remains limited and that access to lawyers is still not afforded.

38. To examine the situation of those held as mercenaries and to provide the Government with its recommendations on how to tackle this situation, the Working Group has expressed to the Government its willingness to visit Libya. As noted above, the visit scheduled to take place from 21 to 25 May 2012 was postponed. The Working Group hopes to carry out its visit, as agreed with the Government, in October 2012.

IV. Private military and security companies

A. Evolving role of private military and security companies in Afghanistan and Iraq

39. As foreign military involvement in the conflicts in Afghanistan and Iraq diminishes, the role and activities of private military and security contractors in those regions have evolved.

40. In Iraq, for example, as at March 2010, the United States Department of Defense employed 95,461 contractor personnel (compared to some 95,900 uniformed personnel in-country). A total of 62,295 personnel (65 per cent of contractors) performed base support functions such as maintaining the grounds, running dining facilities and performing laundry services. Security was the second most common service provided, with 11,610 personnel (12 per cent of contractors). With the withdrawal of United States ground troops at the end of 2011, the overall number of contractors has fallen. The number of contractors providing base support and construction has fallen most dramatically, but the number of private contractors providing security has also dropped, to 2,417.[6]

41. At the same time, however, private military and security companies are expanding their involvement in other spheres. The United States Department of State has indicated that it will have some 5,000 private security personnel to protect its diplomatic personnel and facilities in Iraq. It is also building aviation capability to transport its personnel around the country. Its helicopters and fixed-wing aircraft will reportedly be operated by contractors. In addition, it will have 4,500 "general life support" contractors.[7]

42. Contractors that previously worked with foreign forces are looking to provide their services to foreign multinationals operating in Iraq, in particular in the extractive sector. On 29 February 2012, however, the Oil Ministry of Iraq issued an order in which it banned foreign security companies from the 12 major oil fields

[6] Moshe Schwartz, *Department of Defense Contractors in Afghanistan and Iraq: Background and Analysis*, Congressional Research Service, 13 May 2011. Available from www.fas.org/sgp/crs/natsec/R40764.pdf.

[7] Kirit Radia, "A look at US presence in Iraq after troops leave", 21 October 2011. Available from http://abcnews.go.com/blogs/politics/2011/10/a-look-at-us-presence-in-iraq-after-troops-leave/.

being developed by international companies, mainly in the south, with security to be provided by the country's oil police.[8]

43. According to the United States Congressional Research Service, in 2011, the number of private security contractors employed by the United States Department of Defense in Afghanistan reached a record high of 18,919.[6] As detailed in section IV.C below, the Government of Afghanistan has been making significant efforts to reduce the use of private military and security companies by the International Security Assistance Force and by governmental and non-governmental agencies that are engaged in providing development assistance. It has also been working to ensure that contractors follow relevant national rules. In January 2012, the Afghan police arrested two British private security contractors and their two Afghan colleagues working for the international security company GardaWorld and ordered their company closed down after finding a cache of illegal AK-47 rifles in their vehicle.[9]

B. Maritime security

44. Over the past several years, armed private security guards have increasingly become a feature of maritime shipping. Piracy has become a significant issue for the shipping industry, in particular off the coast of Somalia in the Gulf of Aden and in the Indian Ocean. The International Maritime Bureau reports that, of 189 piracy and armed robbery attacks on-board ships in 2012, 70 took place off the coast of Somalia, with a total of 212 hostages being taken.[10] The shipping industry has responded to such attacks by engaging armed private security guards on ships. The Foreign Affairs Committee, a parliamentary body in the United Kingdom of Great Britain and Northern Ireland, has noted that, while in the past it was widely judged that the risks of private armed security guards on-board ships would outweigh the benefits, over the past year their use has become increasingly accepted by the maritime industry. It is currently estimated that between 15 and 25 per cent of vessels operating off the coast of Somalia use such services.[11] It has also been reported that insurers frequently require maritime companies to engage armed security.

C. Peace industry

45. Another area in which private military and security companies are increasingly involved is peacekeeping operations, where they are either engaged by States that are unwilling or unable to send their own military personnel to support peacekeeping efforts or by the United Nations. These activities were highlighted in

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[8] UPI, "Iraq bans security firms on oil fields", 19 March 2012. Available from www.upi.com/Business_News/Security-Industry/2012/03/19/Iraq-bans-security-firms-on-oil-fields/UPI-21471332177942/.

[9] Buck Sexton, "Afghan police arrest British security contractors for 'arms transport'", 5 January 2012. Available from www.theblaze.com/stories/afghan-police-arrest-british-security-contractors-for-arms-transport/.

[10] See www.icc-ccs.org/piracy-reporting-centre/piracynewsafigures.

[11] United Kingdom, House of Commons Foreign Affairs Committee, *Piracy off the coast of Somalia* (London, The Stationery Office, 2012). Available from www.publications.parliament.uk/pa/cm201012/cmselect/cmfaff/1318/1318.pdf.

three recent reports.[12] The Working Group has begun to study this aspect of the private military and security company industry and will provide further views in future reports. The Working Group notes that, as discussed in further detail in section II.C, the United Nations is developing policies with regard to its use of private military and security companies as armed security. Other aspects of the Organization's use of such companies, however, would not be covered by these policies and also require attention.

V. Efforts to regulate private military and security companies

46. As the private military and security company industry is evolving, so too are efforts to ensure that it is properly regulated and that victims of human rights violations by companies have access to remedies. The Working Group notes that companies often take on functions that are traditionally the preserve of State armed forces. It has long been recognized that these types of functions pose particular risks to human rights because they involve the potential for the use of force against civilians and the citizenry. These risks are further exacerbated by the environments in which the companies typically operate: conflict and post-conflict situations and places in which the rule of law is weak.

47. Given these risks, the Working Group has taken the position that private military and security companies should be regulated by States, preferably through an international convention. The Working Group also recognizes the vital role played by national legislation in ensuring that such companies comply with international human rights and humanitarian law standards and that victims of abuses have access to remedies. Industry standard-setting efforts are another key means of generating greater respect for human rights and humanitarian law. As detailed below, the recognition that more needs to be done to regulate private military and security company activities is apparent at all these levels.

A. International regulation

48. In 2008, the Working Group proposed a list of elements that could be included in a convention on private military and security companies (A/63/325) and developed text for such a convention in 2011 (A/HRC/WG.10/1/2). As mentioned above, in its resolution 15/26, the Human Rights Council established an open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework, including, the option of elaborating a legally binding instrument on the regulation, monitoring and oversight of the activities of private military and security companies, including their accountability, taking into

[12] Sabelo Gumedze and others, "From market for force to market for peace: private military and security companies in peacekeeping operations", Monograph No. 183 (Pretoria, Institute for Security Studies, 2011). Available from www.issafrica.org/pgcontent.php?UID=31221; Åse Gilje Østensen, "UN use of private military and security companies: practices and policies", SSR Papers No. 3 (Geneva, Geneva Centre for the Democratic Control of Armed Forces, 2011). Available from www.dcaf.ch/Publications/UN-Use-of-Private-Military-and-Security-Companies-Practices-and-Policies; Global Policy Forum, "Dangerous partnership: private military and security companies" (2012). Available from www.humansecuritygateway.com/showRecord.php?RecordId=37946.

consideration the principles, main elements and draft text as proposed by the Working Group. The open-ended intergovernmental working group held two sessions, the second of which took place from 13 to 17 August 2012. At the conclusion of extensive substantive discussions with the participation of experts, including the members of the Working Group, the open-ended intergovernmental working group concluded that it would be useful to continue to explore the issues relating to the industry, including the option of elaborating a convention on private military and security companies. It recommended to the Human Rights Council that discussions should be continued for a further period of two years.

49. There is also increasing recognition of the need to regulate the use of armed security on-board shipping vessels. In a recent interim guidance paper, the International Maritime Organization (IMO) notes that, while the United Nations Convention on the Law of the Sea and customary international law provide the coastal State with sovereignty in its territorial sea, no international guidance or standards currently exist for private maritime security companies providing such services. It also states that such guidance would improve governance, reduce the potential for accidents and promote competent, safe and lawful conduct at sea (MSC.1/Circ.1443, annex, para. 1.1). IMO acknowledges the value of the Montreux Document and the International Code of Conduct for Private Security Service Providers, but notes that they are not directly relevant to the situation of piracy and armed robbery in the maritime domain and do not provide sufficient guidance for private military and security companies (ibid., para. 2.1). The guidance was issued to fill this regulatory gap in the interim and to assist in the development of an international standard and certification process for private military and security companies to protect against acts of piracy and armed robbery at sea and to assist such companies in demonstrating their competence and professionalism to shipowners in the interim (ibid., para. 2.3).

50. In its most recent report (S/2012/544), the Monitoring Group on Somalia and Eritrea similarly notes the absence of control and inspection of armed activities (para. 74) and that, despite the guidelines, recommendations and model contracts issued by IMO and the Baltic and International Maritime Council, the activities of this industry remain unmonitored and largely unregulated (para. 72 and annex 5.4).

51. Security providers themselves have noted the need for better regulation. The Security Association for the Maritime Industry recently pointed out that, while there were more than 60 private maritime companies offering armed protection off the coast of Somalia and across the Indian Ocean, the level of service was inconsistent and sometimes illegal, and that it was clear that there was a requirement for some form of quality control of maritime security companies.[13]

52. The Working Group is of the view that the maritime security industry is just one example of an ever-expanding range of private military and security company activities requiring international regulation. As part of its efforts to further explore the issues relating to maritime security providers, the Working Group has been discussing with the Transitional Federal Government of Somalia the possibility of a country visit in December 2012. It has also initiated contact with IMO to maintain links between the process of developing regulations for maritime security companies and the human rights processes in Geneva.

[13] See www.marsecreview.com/wp-content/uploads/2011/04/SAMI-Brief-3-Apr-11..pdf.

53. In addition to the developments with regard to new international standards for private military and security companies, efforts have been made to ensure that States are aware of their existing obligations. At the initiative of the Government of Switzerland, two regional workshops were held to promote the Montreux Document: in October 2011, in Ulaanbaatar, and in May 2012 in Canberra. They had the objectives of raising awareness of the regional issues associated with private military and security companies, identifying regulatory options for Governments and discussing the relevance of the Montreux Document to the North-East and Central Asian and Pacific regions.

B. Regional efforts

54. In its resolution of 11 May 2011 on the development of the common security and defence policy, the European Parliament considered that it was necessary to adopt European Union regulatory measures, including a comprehensive normative system for the establishment, registration, licensing, monitoring and reporting on violations of applicable law by private military and security companies, both at the internal and external levels. The Parliament called upon the European Commission and the Council of the European Union to initiate appropriate actions. In its February 2012 position paper on the European Union priorities at the Human Rights Council, the Council of the European Union stressed the importance of effective regulation to prevent or remedy human rights violations that had a connection to the activities of private military and security companies. It endorsed the initiative of the High Representative of the European Union for Foreign Affairs and Security Policy to express the Union's support for the Montreux Document as a contribution to stronger international regulation and control of the activities of private military and security companies. That support was reiterated in the European Union Strategic Framework and Action Plan on Human Rights and Democracy, in which the Council of the European Union stated the Union's commitment to promoting adhesion by third countries to the Montreux Document.

C. Developments at the national level

55. National-level efforts have been made to better regulate the activities of private military and security companies. As noted previously, the Working Group has recently launched an initiative to prepare a comprehensive map of national legislation in this sphere. Accordingly, the developments highlighted below provide examples of national legislation, but are by no means a comprehensive survey.

1. Afghanistan

56. Presidential Decree No. 62 of 2010 provides for the gradual elimination of private security companies from the country. Embassies and entities with diplomatic status are exempted and may continue to employ private security companies for guard services. The first phase of the transition period had been expected to end on 20 March 2012, at which time the responsibility for providing security for development sites and convoys would have been assumed by the Afghan Public Protection Force. The process was affected by delays, however, leading the Government to grant companies extensions ranging from a few weeks to 90 days. It appears that the Force is ramping up its capacity to assume its responsibilities: the

North Atlantic Treaty Organization training mission in Afghanistan reported that, as at 4 June 2012, the Force had a staffing complement of approximately 16,000 guards (including 6,000 who made a transition from private security companies) of the target goal of approximately 30,000 guards by March 2013.[14]

2. Germany

57. On 18 July 2012, the Cabinet adopted draft legislation on maritime security providers, requiring certification of security service providers based in Germany conducting operations seawards of the German exclusive economic zone. German-flagged ships are required to employ only security providers authorized under the new certification scheme. The law amends the rules on the carrying of weapons and provides that a federal weapons authority will be responsible for approving weapons carried on board. The legislation is expected to be approved by the Bundestag, the federal parliament of Germany, and the Bundesrat, the federal council, by the end of 2012. As currently drafted, it would enter into force on 1 August 2013, although some aspects will probably enter into force earlier so as to allow a transitional period.

3. Switzerland[15]

58. In October 2011, the Federal Department of Foreign Affairs of the Government of Switzerland issued a draft law on the provision of private security services abroad for public consultation. The Working Group welcomed that open and transparent process and submitted its comments in January 2012. The Swiss draft law follows two tracks. First, it prohibits certain activities, including direct participation in hostilities in an armed conflict,[16] the hiring, training and provision of security personnel for direct participation in hostilities, and the provision of security services associated with serious infringement of human rights. Second, it regulates private companies providing security services. Such services are defined to include a range of activities from protection tasks to guarding prisoners to operational or logistical support for armed or security forces and intelligence activities.

4. South Africa[15]

59. On 30 May 2012, the Cabinet approved the Private Security Industry Regulation Amendment Bill (2012) for submission to Parliament. If adopted, the bill, which would amend the Private Security Industry Regulation Act (No. 51 of 2001), would require the registration of companies providing security services. Only companies majority owned by South Africans would be permitted. Where security companies recruit, train, hire out, send or deploy security services outside South Africa, the bill would require them to provide monthly information on such activities to the Director of the Private Security Industry Regulatory Authority. Lastly, it would prohibit companies from engaging in any activity proscribed by the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country

[14] See http://ntm-a.com/archives/tag/afghan-public-protection force.

[15] The present section is based on the report of the Working Group to the Human Rights Council at its twenty-first session (A/HRC/21/43).

[16] Draft article 4 (d) of the Swiss draft law defines direct participation in hostilities as "direct participation in hostilities developing within the scope of an armed conflict abroad within the meaning of the Geneva Conventions and Additional Protocol I and II".

of Armed Conflict Act (No. 27 of 2006) or the Regulation of Foreign Military Assistance Act (No. 15 of 1989).[17]

5. United Kingdom

60. Interim guidance to United Kingdom-flagged shipping on the use of armed guards to defend against the threat of piracy in exceptional circumstances was issued by the Department of Transport of the United Kingdom in November 2011. The guidance, while not binding, provides that armed guards should be used only in exceptional circumstances and that, before taking a final decision on whether to engage armed guards, the shipping company should assess the risks associated with their use. In doing so, the shipping company needs to assess whether the perceived benefits of engaging armed guards substantially outweigh the risks associated with their use. A non-exhaustive list of factors to take into account in making that evaluation is also provided. It is noted in the guidance that the Government of the United Kingdom does not currently recognize an accreditation process for private security companies operating in the maritime sector and that shipping companies must, therefore, be extra vigilant in selecting an appropriate company to provide armed security on-board their ships. Lastly, an entire section is devoted to the question of defending against pirate attack, including rules on the use of force on-board a vessel, and in the United Kingdom in general, and another section to post-incident actions and the reporting obligation with a particular focus on firearms incidents.[18]

6. United States[15]

61. The Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 required the Office of Management and Budget to review existing definitions of the term "inherently governmental functions" and to create a single definition that would ensure that only Government employees or members of the armed forces performed inherently governmental functions and other critical functions necessary for the mission success of a federal agency. It would also address any deficiencies in the existing definitions. In September 2011, the Office issued a policy letter in which inherently governmental functions were defined, building on an earlier statutory definition that inherently governmental functions were those that were so intimately related to the public interest as to require performance by federal Government employees.[19] The Office listed functions necessarily included in that definition,[20] in addition to those that would not normally be included.[21] It provided

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[17] The bill is available from www.jutalaw.co.za/media/filestore/2012/06/Private_Security_Industry_Regulations_AB_2012.pdf. Comments are available from http://iissonline.net/?category_name=south-africa.

[18] See http://assets.dft.gov.uk/publications/use-of-armed-guards-to-defend-against-piracy/use-of-armed-guards-to-defend-against-piracy.pdf.

[19] The letter is available at www.gpo.gov/fdsys/pkg/FR-2011-09-12/html/2011-23165.htm.

[20] Among others, the following functions appear on this list: "to determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action" and "to significantly affect the life, liberty, or property of private persons".

[21] Among others, the following functions appear on this list: "any function that is primarily ministerial and internal in nature (such as building security, … warehouse operations …)".

an illustrative list of inherently governmental functions[22] and another illustrative list identifying functions closely associated with the performance of inherently governmental functions.[23] It also included guidance for executive departments and agencies on ensuring that appropriate personnel performed inherently governmental and critical functions.

62. There have also been various initiatives in the United States to prevent the outsourcing of specific functions. Most recently, the House of Representatives has been considering the National Defense Authorization Act for Fiscal Year 2013, which contains a provision prohibiting the Department of Defense from granting contracts for private security guard services at military facilities in Afghanistan.

63. The Congress of the United States has also been active in promoting jurisdiction for contractor crimes committed abroad. In addition to the Military Extraterritorial Jurisdiction Act of 2000 and the John Warner National Defense Authorization Act for Fiscal Year 2007, which extended jurisdiction to contractors involved in contingency operations, it is also considering the Civilian Extraterritorial Jurisdiction Act, which would clarify and expand criminal jurisdiction over federal contractors and employees working outside the United States. The Working Group is of the view that this law would substantially improve the ability of United States courts to exercise jurisdiction over private military and security company employees who violate human rights. Nonetheless, as it noted in its communication to the Government, the Working Group is concerned about the existence of an exemption for the authorized intelligence activities of the Government.

D. Industry-led initiatives

64. On 16 January 2012, the Temporary Steering Committee of the International Code of Conduct for Private Security Service Providers, a multi-stakeholder initiative supported by the Government of Switzerland, issued the Draft Charter of the Oversight Mechanism for the Code for public consultation. As the implementing mechanism of the Code, the Charter's structure and procedures have a critical bearing on the realization of the Code's principles, goals and rules. The Charter's effectiveness is the litmus test for the legitimacy of the Code as a means of improving the adherence of private military and security companies to human rights standards.

65. By a letter dated 30 March 2012, the Working Group expressed its continued support for the process of developing the Code and the Charter as a means of

[22] The illustrative list of inherently governmental functions includes "the command of military forces, especially the leadership of military personnel who are performing a combat, combat support or combat service support role", "combat", "security operations performed in direct support of combat as part of a larger integrated armed force", "security operations performed in environments where, in the judgment of the responsible Federal official, there is significant potential for the security operations to evolve into combat", and "security that entails augmenting or reinforcing others (whether private security contractors, civilians, or military units) that have become engaged in combat".

[23] The illustrative list of those functions that are closely associated with the performance of inherently governmental functions includes the "provision of non-law-enforcement security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details".

improving the adherence of private military and security companies to international humanitarian and human rights standards. The Working Group recognized the challenges of developing the Charter and submitted extensive comments in an effort to improve the draft text so that it would better fulfil the promise of the Code to protect human rights in the context of private military and security company activities.

66. The Working Group encouraged the Temporary Steering Committee to modify the Charter to mainstream the protection of human rights explicitly, which is the expressed goal of the International Code of Conduct. The Working Group also recommended that the Charter should be brought further into compliance with the Guiding Principles on Business and Human Rights. In the view of the Working Group, the Guiding Principles set out the minimum standards that an industry self-regulatory mechanism should meet.

67. The Working Group suggested specific areas in which the Charter could be strengthened. For example, it should require field audits. In addition, the third-party grievance mechanism established by the Charter should be revised to address the substance of third-party complaints (as envisaged in the Code), rather than focusing only on the procedural compliance of member companies. Lastly, the draft Charter contains provisions that permit companies to refuse to share information with monitoring mechanisms owing to contractual provisions or the potential for parallel legal proceedings. While the Working Group recognized the reasoning behind such provisions, it believed that they provided significant loopholes that could prevent the effective operation of Charter mechanisms and that the inclusion of those types of provisions reflected the inherent limitations of a self-regulatory mechanism, which could never replace accountability through the law.

68. The American National Standards Institute approved and issued in March 2012 its quality standard for private security companies. The standard, which builds on the Montreux Document and the International Code of Conduct, aims to provide requirements and guidance for a management system for private security providers with auditable criteria consistent with human rights, legal obligations and good practices. Those involved in the development of the standard have indicated that the goal is to undertake the process for becoming a standard approved by the International Organization for Standardization.

VI. Conclusions and recommendations

A. Mercenaries

69. **The Working Group is deeply concerned about the alleged involvement of mercenaries in Côte d'Ivoire in killing and injuring civilians, the recruitment of children and in looting private property.**

70. **The Working Group urges Côte d'Ivoire and Liberia to identify, arrest and promptly prosecute the mercenaries responsible for violations of human rights and to take the measures necessary to prevent the recruitment and training of mercenaries, with special emphasis on children, on their territories.**

71. **The Working Group further requests the President of Côte d'Ivoire, in his capacity as Chair of the Authority of Heads of State and Government of the**

Economic Community of West African States, to tackle the threats to human rights posed by mercenary activities in the subregion.

72. **At the same time, the Working Group is concerned about the measures taken by the Government of Libya against alleged mercenaries, their detention conditions and their rights to a fair trial. The Working Group urges the Libyan authorities to charge detainees being held in connection to the conflict for their involvement in specific criminal acts and to release those against whom there is no evidence of crime.**

73. **The Working Group requests Libya to ensure that conditions of detention of persons accused or suspected of being mercenaries comply with applicable international law, including proper treatment of detainees, access to lawyers and family, and the ability to lodge complaints of torture and ill-treatment.**

74. **The Working Group further appeals to Member States that are not yet parties to consider acceding promptly and as a matter of urgency to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries.**

B. Private military and security companies

75. **Given the risk to human rights of the activities of private military and security companies, the Working Group welcomes efforts by States to continue discussing the possibility of international regulation, in addition to the progress at the regional and national levels and industry-led initiatives.**

76. **The Working Group is of the view that further research into effective national regulatory strategies is needed and recommends that Member States respond to its request to collect all national legislation relevant to private military and security companies to facilitate analysis by multiple stakeholders.**

77. **The Working Group welcomes efforts to clarify obligations under international law and identify good practices, such as the Montreux Document, and industry self-regulation initiatives, such as the International Code of Conduct for Private Security Service Providers. The Working Group urges States to recognize these initiatives as complementary to, but no substitutes for, strong international and national regulatory frameworks.**

78. **The Working Group reiterates its view that a comprehensive, legally binding international regulatory instrument is the best way to ensure adequate protection of human rights. The Working Group therefore encourages all States to participate actively in the work of the intergovernmental working group established by the Human Rights Council with a view to considering the possibility of an international instrument for the regulation of private military and security companies.**

79. **The Working Group encourages States to ensure the investigation and prosecution of violations of international human rights law involving private military and security companies to guarantee accountability for human rights violations and provide an effective remedy for victims.**

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Sustainable development

Oil slick on Lebanese shores

Report of the Secretary-General**

Summary

The present report, submitted in response to the request contained in General Assembly resolution 66/192, provides an update on the progress of the implementation of Assembly resolutions 61/194, 62/188, 63/211, 64/195, 65/147 and 66/192 related to the oil slick on Lebanese shores that resulted from the bombing of the Jiyeh power plant, a civilian utility serving the general public in Lebanon, in August 2006. It complements the information presented in previous reports of the Secretary-General on the subject (A/62/343, A/63/225, A/64/259, A/65/278 and A/66/297).

* A/67/150.

** The submission of the present report was delayed owing to the extensive consultations on the legal issues covered in the report.

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I. Introduction

1. The present report was prepared by the United Nations Environment Programme (UNEP) and the United Nations Development Programme (UNDP), building on the work undertaken by an inter-agency team,[1] established for the previous reports. It is submitted pursuant to paragraph 10 of General Assembly resolution 66/192, in which the Assembly requested the Secretary-General to submit a report on the implementation of the resolution at its sixty-seventh session under the item entitled "Sustainable development".

II. A brief overview of recent developments

2. The report provides a brief summary of the information presented in the previous reports of the Secretary-General, together with updates on the relevant issues. It provides also a further legal analysis by UNEP to explore the value of the experience of the United Nations Compensation Commission in addressing pertinent issues as called for in paragraph 6 of General Assembly resolution 66/192.

3. The marine oil spill resulted in the release of about 15,000 tons of fuel oil into the Mediterranean Sea, leading to the contamination of about 150 km of coastline in Lebanon and the Syrian Arab Republic, causing adverse impacts to the environment and the achievement of sustainable development as highlighted in General Assembly resolutions 61/194, 62/188, 63/211, 64/195, 65/147 and 66/192.

4. Several United Nations agencies and other international regional and national entities, including the International Union for Conservation of Nature, the World Bank and the National Council for Scientific Research of Lebanon were involved in assessing the implications of the oil spill for human health, biodiversity, fisheries and tourism in Lebanon. A summary of their combined findings was presented to the General Assembly in the previous reports of the Secretary-General. No further studies have been conducted during the past year.

5. In paragraph 4 of its resolution 66/192, the General Assembly reiterated its request to the Government of Israel to assume responsibility for prompt and adequate compensation to the Government of Lebanon and other countries directly affected by the oil slick, such as the Syrian Arab Republic whose shores have been partially polluted, for the costs of repairing the environmental damage caused by the destruction, including the restoration of the marine environment, in particular in the light of the conclusion contained in the report of the Secretary-General that there remains grave concern at the lack of implementation of the relevant provisions of the resolutions of the General Assembly on the subject vis-à-vis reparations and compensation to the Government and people of Lebanon and the Syrian Arab Republic affected by the oil spill. This echoes and emphasizes previous Assembly requests. To date this provision of the Assembly resolution has not been implemented.

6. In paragraph 5 of its resolution 66/192, the General Assembly requested the Secretary-General to give further consideration to the option of securing the relevant

[1] The inter-agency team comprised the United Nations Environment Programme, the United Nations Development Programme, the Food and Agriculture Organization of the United Nations, the World Health Organization and the World Bank. The International Union for Conservation of Nature was also a key partner in this work.

compensation from the Government of Israel. In 2007 UNDP reviewed the many conventions that relate to oil pollution at sea and that many Eastern Mediterranean countries have signed, but found that all of them are inapplicable during armed hostilities. Further, the agreements that relate to oil-spill compensation relate only to oil spills from tanker vessels at sea and not to land-based incidents. UNDP noted that the United Nations Compensation Commission offers the only precedent for a major oil-spill compensation regime for spills arising from armed hostilities. However, as stated in my previous report, the mandate of the Commission is limited to processing claims and paying compensation for losses and damage suffered as a direct result of the unlawful invasion and occupation of Kuwait by Iraq. It, therefore, does not have a potential role to play in securing compensation from Israel for the costs of repairing the environmental damage that is the subject of the present report. Nevertheless, it was thought that the Commission's experience in handling claims for compensation for environmental damage might be of some relevance to a case such as the present oil slick.

7. In paragraph 8 of its resolution 66/192, the General Assembly welcomed the agreement of the Lebanon Recovery Fund to host the Eastern Mediterranean Oil Spill Restoration Trust Fund, and in paragraph 9 noted that the Secretary-General had previously urged Member States, intergovernmental organizations and the private sector to continue their support for Lebanon in this matter, and reiterated its invitation to States and the international donor community to make voluntary financial contributions to that Trust Fund. In this regard, the Assembly requested the Secretary-General to mobilize international technical and financial assistance in order to ensure that the Trust Fund has sufficient and adequate resources, since Lebanon is still engaged in the treatment of wastes and monitoring of recovery. To date no contributions have been made to the Eastern Mediterranean Oil Spill Restoration Trust Fund hosted by the Lebanon Recovery Fund.

III. Experiences of the United Nations Compensation Commission in handling environmental damage which may be relevant to a case such as the present oil slick

8. In paragraph 6 of its resolution 66/192, the General Assembly requested the Secretary-General to explore the value of the experience of the United Nations Compensation Commission in terms of defining environmental damage in a case such as the present oil slick, in measuring and quantifying the damage sustained and in determining the amount of compensation payable in respect of it.

9. The Security Council, in paragraph 16 of its resolution 687 (1991) of 3 April 1991, affirmed that Iraq was liable under international law for any direct loss, damage — including environmental damage and the depletion of natural resources — or injury to foreign Governments, nationals and corporations as a result of its unlawful invasion and occupation of Kuwait. By its resolution 692 (1991) of 20 May 1991, the Security Council established the United Nations Compensation Fund to pay compensation for claims that fell within the scope of paragraph 16 of its resolution 687 (1991) and established the United Nations Compensation Commission to process such claims and order the payment of compensation from the Fund for such losses.

10. The Governing Council of the Commission established panels of commissioners to determine the admissibility of claims, verify their validity, evaluate the loss for

which compensation was being sought and calculate any allowable compensation. The panels then submitted their recommendations to the Governing Council, which made the final determination whether a claim should be met and, if so, in what amount. Pursuant to article 31 of the Rules for Claims Procedure adopted by the Governing Council, commissioners, in considering claims, were to apply Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council. In addition, where necessary, commissioners were to apply other relevant rules of international law.

11. In December 1998, the Governing Council appointed a Panel of Commissioners to review claims for direct losses relating to environmental damage and depletion of natural resources resulting from Iraq s invasion and occupation of Kuwait (F4 claims).

A. Defining environmental damage

12. Neither the Governing Council nor the F4 Panel expressly defined the meaning of "environmental damage" as such. Rather, what constituted environmental damage was clarified in the context of specific claims that they processed.

13. Regarding the scope of environmental damage covered in its work, the F4 Panel stated that any loss of or damage to natural resources that could be demonstrated to have resulted directly from Iraq's invasion and occupation of Kuwait must be deemed to be encompassed in the concept of "environmental damage and the depletion of natural resources" within the meaning of Security Council resolution 687 (1991).

14. The Panel did not consider that there was anything in the language or context of Security Council resolution 687 (1991) that mandated or suggested an interpretation that would restrict the term "environmental damage" to damage to natural resources which had commercial value. The Panel, therefore, concluded that a loss due to depletion of or damage to natural resources, including resources that may not have a commercial value, was, in principle, compensable in accordance with Security Council resolution 687 (1991) if such loss was a direct result of Iraq's invasion and occupation of Kuwait.

B. Measuring and quantifying the damage sustained

15. Decision 7 of the Governing Council details the type of environmental losses that can be submitted as claims. Paragraph 35 of the decision provides that "direct environmental damage and depletion of natural resources" includes losses or expenses resulting from:

(a) Abatement and prevention of environmental damage, including expenses directly relating to fighting oil fires and stemming the flow of oil in coastal and international waters;

(b) Reasonable measures already taken to clean and restore the environment or future measures which can be documented as reasonably necessary to clean and restore the environment;

(c) Reasonable monitoring and assessment of the environmental damage for the purposes of evaluating and abating the harm and restoring the environment;

(d) Reasonable monitoring of public health and performing medical screenings for the purposes of investigation and combating increased health risks as a result of the environmental damage;

(e) Depletion of or damage to natural resources.[2]

16. According to the list above, the Governing Council identified four categories of compensable losses or expenses caused by environmental damage, namely, (a) activities to monitor and assess the damage; (b) activities to abate and prevent environmental damage; (c) activities undertaken to clean and restore the environment; and (d) losses resulting from depletion of or damage to natural resources. The F4 Panel used the same categories to cluster the compensation claims, giving priority to claims relating to monitoring and assessment in its report on the first instalment of claims,[3] then addressing substantive environmental claims on prevention and restoration in its reports on the second, third and fourth instalments, and finally considering claims on the depletion of natural resources in its report on the fifth instalment.

17. Against that background, the F4 Panel considered a range of claims concerning environmental damage. An overview of those claims with respect to oil pollution, as highlighted in the reports of the Panel,[4] includes the following, which indicates the possible elements of such environmental damage:

(a) Compensation for measures to respond to environmental damage and human health risks from oil lakes formed by oil released from damaged wells in Kuwait; oil spills in the Persian Gulf caused by oil released from pipelines; offshore terminals and tankers; and pollutants released from oil well fires in Kuwait;

(b) Compensation for expenses resulting from cleaning and restoration measures taken or to be taken to remediate damage from oil released from damaged oil wells in Kuwait; pollutants released from oil well fires and firefighting activities in Kuwait; and oil spills into the Persian Gulf from pipelines, offshore terminals and tankers;

(c) Compensation for expenses resulting from measures already taken or to be taken to remediate damage caused inter alia by oil released from damaged oil wells in Kuwait; pollutants released from the oil well fires and firefighting activities in Kuwait; oil released from pipelines on to the land; oil-filled trenches; oil spills into the Persian Gulf from pipelines, offshore terminals and tankers; and the movement and presence of refugees who departed from Iraq and Kuwait;

(d) Compensation for damage to or depletion of natural resources resulting from, inter alia, pollutants from the oil well fires and damaged oil wells in Kuwait; oil spills into the Persian Gulf from pipelines, offshore terminals and tankers; influx of refugees into the territories of some of the claimants.

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[2] It should be noted, however, that in the opinion of the F4 Panel, the term "environmental damage" in paragraph 16 of Security Council resolution 687 (1991) was not limited to losses or expenses resulting from the activities and events listed in paragraph 35 of Governing Council decision 7, and it should rather be considered as providing guidance regarding the types of activities and events that can result in compensable losses or expenses.

[3] S/AC.26/2001/16.

[4] S/AC.26/2002/26, S/AC.26/2003/31, S/AC.26/2004/16, S/AC.26/2005/10.

C. Determining the amount of compensation payable for the damage sustained

18. In the review of claims by the Panel, compensation had to be determined on a case-by-case basis. Where a claimant presented evidence that, in the Panel's view, was sufficient to demonstrate the circumstances and amount of the claimed losses or expenses, compensation was recommended for the full compensable amount. Where the evidence presented demonstrated that compensable losses or expenses were incurred but the evidence did not enable the Panel to substantiate the full amount of the claimed losses or expenses, the Panel recommended a smaller amount. Where the information presented was not sufficient to demonstrate that any compensable losses or expenses were in fact incurred, the Panel recommended that no compensation be awarded.

19. Although compensation was determined on a case-by-case basis, the F4 Panel followed a standardized review process in processing claims for environmental damage. The review process included the following steps:

(a) Establishment of a causal link between the damage and Iraq's invasion and occupation of Kuwait;

(b) Assessment of the reasonableness of the measures already taken or future measures to respond to the damage;

(c) Identification of the activity under one of the categories under paragraph 35 of decision 7 of the Governing Council;

(d) Confirmation of evidentiary requirements;

(e) Request to the claimant and a third party, such as an ad hoc team of expert consultants, to submit additional information;

(f) Review of the cost estimate submitted by the claimant and adjustment of the claimed amounts in the light of the additional information received;

(g) Recommendation to the Governing Council on the amount of compensation.

20. In the context of that review process, specific criteria applied depending on the category of claims. Regarding claims for monitoring and assessment activities, environmental damage was not a prerequisite for the claim to be compensable. In the view of the Panel, in its report on the first instalment, the purpose of monitoring and assessment is to enable a claimant to develop evidence to establish whether environmental damage has occurred and to quantify the extent of the resulting loss (S/AC.26/2001/16, para. 29).

21. The Panel also concluded, in its report on the second instalment, with respect to measures taken to prevent environmental damage, that expenses resulting from assistance rendered to countries in the Persian Gulf region to respond to environmental damage, or threat of damage to the environment or public health, qualified for compensation pursuant to Security Council resolution 687 (1991) and Governing Council decision 7 (S/AC.26/2002/26, para. 34).

22. With respect to environmental restoration claims, in its report on the third instalment, the Panel considered that the appropriate objective of remediation was to restore the damaged environment or resource to the condition in which it would

have been if Iraq's invasion and occupation of Kuwait had not occurred. In the view of the Panel, such an approach was appropriate even where there was evidence that the environment was not in pristine condition prior to Iraq's invasion and occupation of Kuwait. The contribution of any pre-existing or subsequent causes of damage — where such causes can be identified — was considered, not in determining the restoration objective to be achieved by remediation, but in determining the proportion of the costs of remediation that could reasonably be attributed to Iraq's invasion and occupation of Kuwait (S/AC.26/2003/31, para. 47).

23. Specifically with respect to claims for depletion of or damage to natural resources, the Panel awarded compensation not only for depletion of natural resources with commercial value but also for "pure environmental damage". On this point, the Panel pointed out that a loss, even temporary, of natural resources that may not have had a commercial value was, in principle, compensable in accordance with Security Council resolution 687 (1991) if such loss was a direct result of Iraq's invasion and occupation of Kuwait. The Panel further elaborated that there was no justification for the contention that general international law precludes compensation for pure environmental damage. In particular, the Panel did not consider that the exclusion of compensation for pure environmental damage in some international conventions on civil liability and compensation was a valid basis for asserting that international law, in general, prohibited compensation for such damage in all cases, even where the damage resulted from an internationally wrongful act.

24. With respect to environmental damage caused by oil pollution, including damage to the marine and coastal environment caused by release of oil into the Gulf, the Panel recommended to award compensation for a number of claims, in a manner described above. The practice of the United Nations Compensation Commission in this regard could conceivably be of use in determining what is compensable and in what amount in respect of other cases of oil pollution of the sea from land-based sources where legal liability for such pollution is accepted or established.

D. Cases which may be relevant to the present oil slick case

25. Certain cases of claims reviewed by the F4 Panel may be relevant to a case such as the present oil slick, providing useful guidance in measuring and quantifying environmental damage and determining the amount of compensation. A summary of some of those cases is presented in the annex to the present report.

IV. Conclusions

26. The Secretary-General wishes to commend the ongoing efforts of the Government of Lebanon to address the impacts of the oil spill. There, however, remains grave concern at the lack of implementation of the relevant provisions of the resolutions of the General Assembly on this subject, vis-à-vis reparations and compensation to the Government and people of Lebanon and the Syrian Arab Republic affected by the oil spill.

27. The Secretary-General would like to once more commend the response of the international donor community to this matter. Nonetheless, given the particularity of the cause and the prevailing circumstances of the Lebanese oil spill case at the time

of the incident and beyond, the Secretary-General would urge Member States, international organizations, international and regional financial institutions, non-governmental organizations and the private sector to continue their support for Lebanon in this matter, particularly for rehabilitation activities on the Lebanese coast and in the broader recovery efforts. This international effort should be intensified, since Lebanon is still engaged in treatment of wastes and monitoring of recovery; countries and the international donor community are encouraged to make contributions to the Eastern Mediterranean Oil Spill Restoration Trust Fund as hosted by the Lebanon Recovery Fund.

Annex

Some cases of claims reviewed by the F4 Panel which may be relevant to a case such as the present oil slick on Lebanese shores

A. Claims by Kuwait concerning marine and coastal environmental damages

Measuring and quantifying the damage

1. Kuwait was awarded compensation in three claims for activities to monitor and assess marine and coastal environmental damage caused by oil pollution resulting from Iraq's invasion and occupation of Kuwait. These claims were reviewed in the report of the Panel on the first instalment of F4 claims, under numbers 5000378,[a] 5000397[b] and 5000398.[c]

2. In the first claim, for which Kuwait obtained compensation in the amount of US$ 37,546,888, the Panel found that the five-year monitoring programme proposed by Kuwait to identify and assess the long-term impacts on Kuwait's marine environment of the millions of barrels of oil released into the Persian Gulf qualified for compensation in accordance with paragraph 35 (c) of Governing Council decision 7.

3. In the second claim, Kuwait was awarded compensation of $18,077,770 for a monitoring programme to obtain information on the amount and type of oil pollution caused to its shoreline as a result of Iraq's invasion and occupation of Kuwait. The purpose of the programme was to provide the basis for the evaluation of treatment technologies for the "oiled shoreline".

4. In the third claim, the Panel recommended compensation in the amount of $8,237,792 for a project to study technologies to treat areas of Kuwait's shoreline that might have been contaminated by oil as a result of Iraq's invasion and occupation of Kuwait. The project consisted of a screening process to assess different technologies that might be effective in treating and restoring contaminated areas ("oiled shoreline").

Determining the amount of compensation

5. The findings of the above-mentioned monitoring and assessment activities contributed to determine the amount of compensation claimed by Kuwait in claim No. 5000259[d] on remediation of damage to marine and coastal resources, reviewed by the Panel in its report on the fourth instalment.

6. In this case, Kuwait sought compensation in the amount of $33,901,560 for expenses of future measures to remediate damage to its coastal environment resulting from Iraq's invasion and occupation of Kuwait. This amount represented a decrease compared to the compensation initially claimed, resulting from amendments

[a] S/AC.26/2001/16, paras. 411-416.
[b] Ibid., paras. 417-425.
[c] Ibid., paras. 426-433.
[d] S/AC.26/2004/16, paras. 158-191.

made by Kuwait on the basis of new information obtained from monitoring and assessment activities carried out as a result of the three claims referred to above.

7. Kuwait stated that its coastal environment was damaged by more than 12 million barrels of oil deliberately released into the Persian Gulf by Iraqi forces. Kuwait alleged that the oil spills in 1991 resulted in oil contamination along its coastline. On the basis of monitoring and assessment, Kuwait identified the following specific areas of contamination:

(a) A coastal oil deposit area;

(b) Coastal oil trenches comprising the mainland coastal oil trench and the Bubiyan Island coastal oil trench;

(c) Areas of coastal weathered oil layers;

(d) Residual oil contamination in certain areas in the Khiran inlets.

8. With regard to the areas of the coastal oil deposit and the mainland coastal oil trench, the Panel observed that the evidence available showed that the areas were almost devoid of plant and animal life. The Panel noted that satellite images and other evidence submitted by Kuwait showed that the contamination in the coastal oil deposit and the mainland coastal oil trench areas were a direct result of Iraq's invasion and occupation of Kuwait. The Panel found that this damage constituted environmental damage directly resulting from Iraq's invasion and occupation of Kuwait, and that a programme to remediate it would constitute reasonable measures to clean and restore the environment.

9. Kuwait proposed to excavate visibly contaminated areas of the coastal oil deposit and coastal oil trenches and to treat the excavated material with high temperature thermal desorption. Kuwait also proposed to apply in situ bioremediation to enhance natural degradation processes for the remaining non-visible contamination.

10. The Panel considered that proposed excavation of visibly contaminated material in the areas of the coastal oil deposit and mainland coastal oil trench was reasonable and that landfilling of the excavated material was also a reasonable disposal option. The Panel did not consider that in situ bioremediation of residual contamination and consequential long-term monitoring would be necessary since the proposed remediation programme involved the excavation of all visibly contaminated material. However, the Panel found that it was necessary to backfill the excavated area with clean material and also to clear the area of ordnance.

11. With regard to the weathered oil layers, the Panel noted that some of them were unusually large, indicating that they resulted from an exceptionally large oil spill. The Panel found that the larger weathered oil layers constituted environmental damage that resulted directly from Iraq's invasion and occupation of Kuwait, and that a programme to remediate the damage constituted measures that were reasonably necessary to clean and restore the environment, in accordance with paragraph 35 (b) of Governing Council decision 7.

12. With regard to the residual oil contamination in the Khiran inlets, the Panel found that, although in situ bioremediation of residual contamination in the shoreline of the inlets appeared to be feasible, the available information indicated that the potential benefits of such bioremediation, in terms of reduction of contamination and improvement in ecological function, were uncertain. In the view

of the Panel, wet tilling of those areas would have been adequate to clean and restore the environment.

13. The Panel concluded that, with the modifications mentioned, the remediation measures proposed by Kuwait constituted measures that were reasonably necessary to clean and restore the environment, within the meaning of paragraph 35 (b) of Governing Council decision 7.

14. The Panel adjusted the expenses of the remediation measures proposed by Kuwait to take account of the above-mentioned modifications:

(a) Elimination of in situ bioremediation and long-term monitoring;

(b) Elimination of high temperature thermal desorption treatment of excavated material;

(c) Costs of landfilling of excavated material;

(d) Costs of wet tilling in the Khiran inlets;

(e) Reduction to take account of the portion of the damage in the weathered oil layer areas that may not be attributable to Iraq's invasion and occupation of Kuwait.

15. These adjustments reduced the compensable expenses to $3,990,152.

B. Claims by Saudi Arabia concerning damages to coastal resources and intertidal shoreline habitats

1. Damage to coastal resources (claim No. 5000451)[c]

1. In this case, Saudi Arabia sought compensation in the amount of $4,748,292,230 for expenses of future measures to remediate damage to its coastal environment resulting from Iraq's invasion and occupation of Kuwait. Saudi Arabia stated that its coastal environment was damaged by (a) more than 10 million barrels of oil deliberately released into the Persian Gulf by Iraqi forces; (b) contaminants released from oil wells in Kuwait that were set on fire by Iraqi forces; and (c) other releases of oil into the Persian Gulf as a result of Iraq's invasion and occupation of Kuwait. Saudi Arabia explained that the damage to its shoreline resulted from the toxicological effects of chemical constituents of oil as well as the physical effects resulting from smothering of sediment layers by oil.

2. Iraq stated that "there is no dispute that the oil spill occurred or that it had immediately caused environmental damage to wildlife and the beaches and habitats of the coast of Saudi Arabia". However, Iraq contended that the damage to Saudi Arabia's shoreline could not be attributed solely to the events in 1991. It pointed out that the region "is constantly exposed both to accidental spills and routine ongoing pollution". Iraq also contended that it was not liable for damage caused by oil releases that resulted from the bombing of Iraqi tankers by the Allied Coalition Forces or for damage from oil that was released from oil wells in Kuwait "long after [Iraqi forces] had withdrawn from Kuwait".

[c] S/AC.26/2003/31, paras. 169-189.

3. The Panel noted that Governing Council decision 7 states that "direct loss, damage or injury" includes any loss suffered as a result of military operations by either side during the period from 2 August 1990 to 2 March 1991. Accordingly, the Panel stated that damage caused by oil releases was compensable whether it resulted from military operations by Iraq or the Allied Coalition Forces. In the view of the Panel, evidence available from a variety of sources supported the conclusion that the overwhelming majority of the oil present in the areas which Saudi Arabia proposed to remediate resulted from Iraq's invasion and occupation of Kuwait.

4. The Panel, therefore, found that damage from oil contamination to the shoreline between the Kuwait border and Abu Ali constituted environmental damage directly resulting from Iraq's invasion and occupation of Kuwait.

Measuring and quantifying the damage

5. Saudi Arabia proposed a programme to remediate the environmental damage. The programme sought to remediate 29 areas, totalling approximately 73 km^2, along the coastline between the Kuwait border and Abu Ali, by excavating and removing visibly contaminated material. Following sediment excavation, the programme proposed to treat the residual contamination in remaining sediments with bioremediation techniques and the excavated material using high temperature thermal desorption at a number of facilities to be constructed for that purpose. Treated sediments were supposed to be blended with dredged subtidal sediments and replaced in excavated areas.

6. The Panel found that the programme proposed by Saudi Arabia to remediate the damage would constitute reasonable measures to clean and restore the environment.

Determining the amount of compensation

7. The Panel adjusted the expenses of the proposed remediation programme to take into account, inter alia, the following modifications:

(a) Reduction in the total area and volume of materials to be remediated;

(b) Emphasis on in situ treatment methods;

(c) Elimination of high temperature thermal desorption treatment of excavated material;

(d) Landfilling of excavated material.

8. The recommended award included provision for long-term monitoring of the remediation activities. The Panel considered it appropriate to integrate continuous monitoring into the design and implementation of the remediation programme in order to make the programme flexible and more able to respond to new information.

9. The Panel, therefore, recommended compensation in the amount of $463,319,284 for this claim.

10. The Panel considered the issue of compensation for loss of use of coastal resources with respect to this claim separately in the fifth instalment of F4 claims as part of claim No. 5000463.

2. Intertidal shoreline habitats (claim No. 5000463)[f]

11. In this claim, Saudi Arabia sought compensation in the amount of $5,369,894,855 for severe and persistent damage to a large area of its intertidal shoreline habitats resulting from the oil spills caused by Iraq's invasion and occupation of Kuwait.

Measuring and quantifying the damage

12. Saudi Arabia proposed to undertake several compensatory projects to cover all the losses referred to in the various claim units of claim No. 5000463. Two of those projects are directly related to the losses to intertidal shoreline habitats. The first project, for which Saudi Arabia sought compensation in the amount of $5,074,890,386, was to establish 10 separate marine and coastal preserves, covering a total area of 183.2 km^2. The second project, for which Saudi Arabia sought compensation in the amount of $295,004,469, was to construct 42.1 km^2 of new salt marshes and mangrove areas within the above-mentioned preserves.

13. The Panel found that the primary restoration envisaged by the award in the third F4 instalment would not fully compensate for the loss resulting from the damage. Accordingly, the Panel considered that compensatory restoration was appropriate in this case.

14. However, the Panel noted that there were differences in the severity of oil contamination, losses in ecological services and expected recovery times in different areas. Accordingly, it made modifications to Saudi Arabia's calculations to reflect those differences.

15. In the view of the Panel, two shoreline preserves with a total area of 46.3 km^2, and operated for a 30-year period, would sufficiently compensate for Saudi Arabia's losses in ecological services in its intertidal shorelines. The Panel considered that such preserves, sited in habitats similar to those that had been damaged, would provide ecological services similar in kind to those that were lost. In the view of the Panel, such preserves were feasible, cost-effective and posed a low risk of adverse impacts. The Panel also noted that those preserves would provide benefits to wildlife as well as offer compensation for the damage to subtidal habitats.

Determining the amount of compensation

16. After reviewing the projects proposed by Saudi Arabia, the Panel considered that a number of modifications were necessary. The expenses of the projects were adjusted to take account of, inter alia, the following modifications:

(a) A 30-year duration for the operation and maintenance of the two recommended preserves, instead of 20 years as proposed;

(b) Reduction in the number of facilities and a decrease in the staff required to operate them;

(c) Adjustments to unit costs and contingency estimates;

(d) Additional allowances for items not budgeted, such as fencing and a pier or ramp;

[f] S/AC.26/2005/10, paras. 611-636.

(e) Elimination of the expenses for land acquisition because insufficient information was provided to support those expenses.

17. These modifications and adjustments reduced the expenses of the compensatory project to $46,113,706.

18. The Panel found that this amount constituted appropriate compensation for damage to or depletion of Saudi Arabia's natural resources resulting from Iraq's invasion and occupation of Kuwait, in accordance with paragraph 35 (e) of Governing Council decision 7.

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The situation in the Middle East

The situation in the Middle East

Report of the Secretary-General

Summary

The present report contains replies received from Member States in response to the note verbale dated 17 May 2012 from the Secretary-General concerning the implementation of the relevant provisions of General Assembly resolutions 66/18, entitled "Jerusalem", and 66/19, entitled "The Syrian Golan".

* A/67/150.

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I. Introduction

1. The present report is submitted pursuant to General Assembly resolutions 66/18 and 66/19. In its resolution 66/18, the Assembly stressed that a comprehensive, just and lasting solution to the question of the City of Jerusalem should take into account the legitimate concerns of both the Palestinian and Israeli sides and should include internationally guaranteed provisions to ensure the freedom of religion and of conscience of its inhabitants, as well as permanent, free and unhindered access to the holy places by the people of all religions and nationalities. In its resolution 66/19, which deals with Israeli policies in the Syrian territory occupied by Israel since 1967, the Assembly demanded once more that Israel withdraw from all the occupied Syrian Golan to the line of 4 June 1967 in implementation of the relevant Security Council resolutions.

2. On 17 May, in order to fulfil my reporting responsibility under resolutions 66/18 and 66/19, I addressed notes verbales to the Permanent Representative of Israel and the permanent representatives of other States Members of the United Nations, requesting them to inform me of any steps their Governments had taken or envisaged taking concerning the implementation of the relevant provisions of those resolutions. As at 31 August 2012, five replies had been received from Burkina Faso, Cuba, Mexico, Qatar and the Syrian Arab Republic. Those replies are reproduced in section II of the present report.

II. Replies received from Member States

Burkina Faso

[Original: French]

The situation in the Middle East has long been marked by the Israeli-Palestinian crisis and the consequent detrimental effects on displaced peoples. Burkina Faso, like the rest of the international community, has always followed the evolution of the situation with particular attention and called for a peaceful, negotiated settlement of the conflict. Based on that belief, it has always supported all United Nations resolutions calling upon the warring parties to negotiate to find appropriate solutions to build a lasting and comprehensive peace in the region — a sustainable peace that guarantees the freedom and self-determination of the Palestinian people without compromising the security of the State of Israel.

Accordingly, Burkina Faso distances itself from any unilateral action in the region through its unfailing support for General Assembly resolutions 66/18 and 66/19, including on the status of the Holy City of Jerusalem.

Cuba

[Original: Spanish]

Cuba fully supports General Assembly resolution 66/18, entitled "Jerusalem", and calls upon all States Members of the United Nations to implement it promptly and rigorously.

Cuba reaffirms its support for and solidarity with the Palestinian people, which for 45 years has suffered under the brutal military occupation of its lands and has had its fundamental human rights denied, including the right to self-determination and freedom.

The critical security, political, economic, social and humanitarian conditions in the occupied Palestinian territory, including East Jerusalem, caused by the continuing Israeli military occupation and the illegal actions and provocations against the Palestinian people and its lands are unacceptable and of deep concern.

Cuba reiterates its strong condemnation of Israel's continued military occupation of the Palestinian territory; Israel's illegal colonization policies and practices in the occupied Palestinian territory, including East Jerusalem; human rights violations; Israel's collective punishment of the Palestinian people by numerous illegal means and measures; and systematic war crimes that are causing the Palestinian people immense suffering.

The construction of settlements in the occupied Palestinian territory, in and around East Jerusalem, is a flagrant violation of international law carried out in open defiance of United Nations resolutions and the advisory opinion issued by the International Court of Justice on 9 July 2004.

Cuba expresses its deep concern at the situation in occupied East Jerusalem, where the Israeli colonization campaign is most intense, aimed at illegally altering the city's demographic composition, character and legal status.

We demand an immediate end to the construction and expansion of settlements and of the wall and to the transfer of more settlers, home demolitions, the intensification of land confiscations, evictions and excavations around the city, the displacement of the Palestinian civilian population, arbitrary and racist residency requirements, restrictions on movement by means of a permit regime and hundreds of checkpoints, the closure of Palestinian institutions, the revocation of Palestinian residency rights, including military deportation orders, settler violence and all other measures aimed at ridding the city of its Palestinian inhabitants and bringing about the illegal annexation of East Jerusalem by Israel.

Cuba reaffirms that all Israeli measures aimed at altering the legal, geographic and demographic character and status of Jerusalem and of the occupied Palestinian territory are null and void and have no legal validity whatsoever.

We stress the need to provide political, economic and humanitarian support to assist the Palestinian people in achieving its legitimate national aspirations, including the inalienable right to self-determination and freedom in its own independent State of Palestine, with East Jerusalem as its capital.

Cuba fully supports General Assembly resolution 66/19, concerning the occupied Syrian Golan, and calls upon all States Members of the United Nations to implement it promptly and rigorously.

Cuba reaffirms the fundamental principle of the inadmissibility of the acquisition of territory by force, in accordance with international law and the Charter of the United Nations, as well as the full applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the occupied Syrian Golan.

It is unacceptable and of deep concern that the Syrian Golan, which has been occupied since 1967, remains under Israeli military occupation. Israel must withdraw immediately from all parts of the occupied Syrian Golan to the line of 4 June 1967 in implementation of Security Council resolutions 242 (1967) and 338 (1973).

The 120 members of the Movement of Non-Aligned Countries have expressed their solidarity with and unconditional support for the rights and the just demand of the Syrian Arab Republic to regain its full sovereignty over the occupied Syrian Golan on the basis of the Arab Peace Initiative, the Madrid peace process, the formula of land for peace and the relevant Security Council resolutions.

The continued occupation of the Syrian Golan and its de facto annexation constitute a stumbling block in the way of achieving a just, comprehensive and lasting peace in the region.

Cuba considers that all legislative and administrative measures and actions taken or to be taken by Israel that purport to alter the legal status, physical character and demographic composition of the occupied Syrian Golan and its institutional structure, as well as Israeli measures to apply its jurisdiction and administration there, are null and void and have no legal effect.

In that connection, Cuba considers that the Israeli decision of 14 December 1981 to impose its laws, jurisdiction and administration on the occupied Syrian Golan is null and void and has no validity whatsoever. Israel must immediately rescind that decision.

All of these measures and actions, including the illegal construction and expansion of Israeli settlements in the Syrian Golan, occupied since 1967, constitute a flagrant violation of international law, international conventions and the Charter and resolutions of the United Nations, in particular Security Council resolution 497 (1981) and the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949.

Cuba strongly condemns the brutal Israeli practices in the prisons established during the occupation and reiterates its deep concern at the inhuman conditions of the Syrian detainees in the occupied Syrian Golan, which have led to the deterioration of their physical health and put their lives at risk, in blatant violation of international humanitarian law.

Cuba demands that Israel comply immediately and unconditionally with the provisions of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and apply them to the situation of the Syrian detainees in the occupied Syrian Golan.

Mexico

[Original: Spanish]

Mexico believes that the Israeli policy of expanding settlements, demolishing homes and constructing a security wall in East Jerusalem is in violation of the relevant United Nations resolutions and of international law. Furthermore, Mexico has joined the international community's condemnation of the evictions of the Palestinian population and the demolition of Palestinian homes in East Jerusalem.

Mexico believes that the occupation and colonization policies in the Syrian Golan are contrary to international law and constitute a stumbling block in the way of achieving a just and comprehensive peace in the Middle East.

Qatar

[Original: English]

The State of Qatar has been taking action to implement the two resolutions, as well as other resolutions on the situation in the Middle East, and has confirmed in all its political actions and practical positions at regional and international forums that a just and comprehensive peace is the strategic option and that the peace process cannot be fragmented and can only be achieved by full Israeli withdrawal from Palestinian and other Arab territory, as well as from the territory still occupied in southern Lebanon. Consistent with the active role played by the State of Qatar in that context, it chairs the Arab Peace Initiative Committee, which seeks to achieve the requirements of peace and lay the foundations of security and stability in the region.

The State of Qatar reaffirms the Arab identity of Jerusalem and rejects all illegitimate and illegal Israeli actions aimed at the Judaization of the Holy City, its annexation or the displacement of its population. Qatar also condemns land confiscation, the building of settlements, Israel's systematic and repeated attempts at aggression against the Al-Aqsa Mosque and the excavation work underneath and surrounding it that threatens to collapse it.

The State of Qatar convened the International Conference for the Defense of Jerusalem on 26 and 27 February 2012, where His Highness Sheikh Hamad bin Khalifa Al-Thani, Emir of the State of Qatar, presented an initiative to call for a Security Council resolution to establish an international commission to investigate all the actions taken by Israel since 1967 in Arab Jerusalem aiming to erase its Islamic and Christian Arab features.

The State of Qatar has announced its support for Syria's request and its right to restore the entire occupied Syrian Arab Golan to the line of 4 June 1967 based on the foundations of the peace process and international resolutions. Qatar has reaffirmed its rejection of all actions taken by Israel aimed at changing the legal, natural and geographical status of the occupied Syrian Arab Golan, as well as its condemnation of Israeli practices and procedures aimed at seizing land and water resources, which constitute a continuing threat to international peace and security in the region and the world.

Syrian Arab Republic

[Original: Arabic]

Since the Israeli occupation of the Syrian Golan in 1967, the international community has consistently maintained its forceful rejection of that occupation, demanding that occupying Israeli forces should be withdrawn from all of the Syrian Golan. The General Assembly, in its resolution 66/19, expressed deep concern at the failure of Israel to withdraw from the occupied Syrian Golan and comply with the relevant Security Council and General Assembly resolutions. The resolution also

declared that the Israeli decision of 14 December 1981 to impose its laws, jurisdiction and administration on the occupied Syrian Golan was null and void and had no validity whatsoever, as confirmed by the Security Council in its resolution 497 (1981), and called upon Israel to rescind the decision.

After 45 years of that despotic occupation, notwithstanding internationally recognized resolutions, the demands for the occupation to end that have been made at international gatherings by most countries of the world and condemnation of the daily Israeli tyrannical practices and blatant violations of all international conventions and norms, Israel remains indifferent to all those demands and international resolutions. There are no obstacles before its expansionist ambitions and no limits to its impunity and disregard for international law.

The Syrian Arab Republic has affirmed its intense desire to continue to work and cooperate with the United Nations with a view to ending the occupation, through the implementation of the relevant resolutions on ending the Israeli occupation of the Syrian Golan and other Arab territories. On the basis of that understanding, the Syrian Arab Republic states in no uncertain terms that United Nations resolutions continue to serve as the basic terms of reference for the just and comprehensive resolution of the problems in the Middle East. Given that fixed principle of Syrian policy, President Bashar al-Assad has declared on more than one occasion that the Syrian Arab Republic is willing to resume peace negotiations on the same basis on which the Madrid peace process was started in 1991. The Syrian Arab Republic has declared in all international forums its full commitment to the relevant international resolutions and has called for their implementation, in particular Security Council resolutions 242 (1967), 338 (1973) and 497 (1981). The Syrian Arab Republic has also called for implementation of the principle of land for peace, in order to ensure full withdrawal by Israel from all of the occupied Syrian Golan to the line of 4 June 1967.

The Syrian Arab Republic strongly condemns the continued denial by Israel of Arab and Syrian rights as enshrined in the Charter of the United Nations. In particular, in June 2011, the Israeli Government decided to build a racist separation wall east of Majdal Shams in the occupied Syrian Golan, allegedly in order to prevent Palestinians and Syrians from crossing the ceasefire line and reaching occupied Majdal Shams. The Israeli Corps of Engineers in fact began constructing the wall at the beginning of July 2011, and an agreement was reached with Israeli contractors to build a wall eight metres high and four kilometres long. We also note in this regard that on 5 June 2011, the forty-fourth anniversary of the 1967 Naksa, the Israeli occupation forces perpetrated an abhorrent massacre, firing live ammunition at peaceful unarmed Syrian and Palestinian demonstrators on the Syrian side of the ceasefire line in the occupied Syrian Golan, resulting in 23 dead and 350 injured. On 15 May 2011, the occupation forces committed a similar crime near the ceasefire line in the occupied Syrian Golan during a commemoration of the 1948 Nakba, firing live ammunition to disperse peaceful demonstrators, resulting in 15 dead and dozens injured. Such incidents demonstrate that there are those who want Israel to remain the single exception to application of the provisions of international law and to benefit from impunity in all situations.

The Government of the Syrian Arab Republic denounces the decisions made by the Israeli Government to intensify settlement in the occupied Syrian Golan, of which the most recent example was the settlement campaign conducted by the so-

called Golan Regional Council during December 2010 under the slogan "Come to the Golan", which induced thousands of Israeli families to settle in the Golan. The Government of the Syrian Arab Republic also condemns the so-called Golan Regional Council's decision to build a new tourist settlement village near the Israeli settlement of Ani'am. It also condemns the cooperation between the Regional Council and the management of the extremist religious settlement of Yonatan, which aims to attract thousands of settlers to the occupied Syrian Golan, and the Israeli tourism companies' focus on building settlements in the guise of "tourist villages" in the Batihah region in the far south of the occupied Golan and, in particular, in the region known as Tall al-Sayyadin on the eastern shore of Lake Tiberias. The Government of the Syrian Arab Republic condemns the tourist excursions to those villages that are organized by international Jewish organizations, and the infrastructure development and settlement expansion by the occupation authorities in the settlements of, inter alia, Eliad, Ein Zivan, Natur, Khasfin, Hadnes and Nof. Such Israeli actions make it clear that the true intention of Israel is to reject peace, paying no heed to Security Council or General Assembly resolutions, the most recent of which are Assembly resolutions 66/19 of 30 November 2011 and 66/80 of 9 December 2011, in which the Assembly called upon Israel to desist from changing the physical character, demographic composition, institutional structure and legal status of the occupied Syrian Golan and in particular to desist from the establishment of settlements.

The Government of the Syrian Arab Republic condemns all Israeli practices and actions with regard to the occupied Syrian Golan, which are a flagrant violation of Security Council resolution 497 (1981) and General Assembly resolution 66/225 of 22 December 2011, entitled "Permanent sovereignty of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources". The Syrian Arab Republic calls upon States Members of the United Nations to refuse to import natural products taken from the occupied territories or produced there, in order to comply with international law and emphasize the need for Israel to respect that law. The Syrian Arab Republic condemns the Israeli occupation authorities' refusal, in late March 2012, to allow Syrian Arab farmers to transport their apple harvest to Syria, a decision that clearly ignores the agreement reached with the International Committee of the Red Cross (ICRC). That arbitrary measure caused significant material damages to Syrian farmers. Large quantities of produce spoiled in trucks that were kept waiting for three weeks. The farmers were unable to find an alternative market for the harvest, the main agricultural produce for farmers in the occupied Syrian Golan. Syria calls upon the Secretary-General to ensure that Israel complies with its agreement with ICRC and does not unjustifiably withhold permission again.

The Syrian Arab Republic condemns the Israeli occupying authorities for extracting water from Mas'adah Lake in the occupied Syrian Golan and diverting it to settlement farms in December 2010. As a result of that Israeli measure, which contravenes international law and the Fourth Geneva Convention, Syrian citizens in the Golan have sustained material losses that are estimated at some $20 million, owing to dwindling fish stocks, poor apple yields in the farms irrigated by lake waters and the desiccation of trees in the orchards. In our annual reports on Israeli practices in the Golan, we have referred before to the policies of the Israeli occupying authorities, which are deliberately designed to control the waters of the

Golan and deny Syrian citizens their natural rights over their own water. This latest Israeli measure, namely, the extraction of the waters of Mas'adah Lake, constitutes an economic and environmental catastrophe of enormous proportions for Syrian citizens in the occupied Syrian Golan.

Israel's actions are, indeed, a violation of Security Council resolution 465 (1980), in which the Council took into account the need to consider measures for the impartial protection of private and public land and property, and water resources. Israeli actions are, furthermore, a violation of paragraph 5 of that resolution, by which the Council determined that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Arab territories occupied since 1967 have no legal validity. In its resolution 497 (1981) the Security Council confirmed that those measures were null and void and without international legal effect.

The Syrian Arab Republic, in accordance with international law and United Nations resolutions, demands that the General Assembly and the international community assume their responsibility to prevent Israel from persisting in its sustained violations, particularly the plundering of the natural resources of occupied Arab territories, including water in the occupied Syrian Golan.

The Syrian Arab Republic rejects the Israeli Knesset decision of 22 November 2010 to hold a referendum on withdrawal from the occupied Syrian Golan and East Jerusalem, requiring the support of more than 80 per cent of Israelis for such withdrawal. That decision violates and shows contempt for international law, which stipulates that territory may not be acquired by force. It is also incompatible with Security Council resolution 497 (1981).

The Government of the Syrian Arab Republic reaffirms the request it has made to the Secretary-General, the President of the General Assembly, the United Nations High Commissioner for Human Rights, the President of the Human Rights Council and the President of ICRC to bring pressure to bear on Israel to ensure that the Syrian prisoners detained in its jails are kept in more humane health conditions. It expresses its rejection of the sham trials of those prisoners, such as the trial of Majid al-Sha'ir before the Israeli District Court in Nazareth on 14 July 2010. Mr. al-Sha'ir was sentenced to five and a half years in prison and his son, Fida al-Sha'ir, was sentenced to three years in prison, on the charge of passing information to the Syrian motherland. The Government of the Syrian Arab Republic denounces the Israeli occupation forces' abduction on 16 April 2012 of the Syrian child Muhammad Khalid Ahmad, who was minding sheep on the Syrian side of the ceasefire line.

The Government of the Syrian Arab Republic also emphasizes its request to the above-mentioned international parties to bring pressure to bear on Israel to rescind its decision preventing citizens in the occupied Syrian Golan from visiting their homeland, Syria, through the Qunaitra crossing. On 27 March 2012, it prevented a delegation of religious dignitaries from the Syrian Arab Golan from crossing to the motherland for the burial of Ahmad al-Hijri in the Syrian city of Suwaida. Those arbitrary Israeli practices inflict material, mental and physical suffering on Syrian citizens, and contravene the Geneva Conventions and all international humanitarian instruments and norms. The Government stresses that Israeli practices in the occupied Syrian Golan exceed all legal and moral bounds, the most recent example being the imposition by the Israeli occupation authorities of

two years' house arrest on a two-year-old child, Fahid Lu'ay Shuqeir, on the pretext that he was born outside Israel when his parents were studying in Syria.

The Government of the Syrian Arab Republic emphasizes the need to take measures to ensure the implementation of relevant international resolutions without bias or selectivity, and to invoke the Geneva Conventions in order to bring pressure to bear on Israel, the occupying Power, to comply with the wishes of the international community in order to achieve a just and comprehensive peace in the Middle East.

Similarly, the Syrian Arab Republic emphasizes its support for General Assembly resolution 66/18, entitled "Jerusalem", and calls upon the international community to bring pressure to bear on Israel to end its occupation of the Arab territories that it has occupied since 1967, including Jerusalem, and to comply with Security Council resolution 478 (1980), in which the Council decided not to recognize the "basic law" regarding Jerusalem that was enacted by Israel, and affirmed that the Israeli decision to impose its laws, jurisdiction and administration on the city of Jerusalem was illegitimate and therefore null and void and without any validity whatsoever. Israel, the occupying Power, has persisted in its illegal settlement activities, which are intended to change the legal status and historical, spiritual and human characteristics of the holy city. It has continued to destroy Palestinian homes and build the separation wall in and around East Jerusalem with the goal of isolating the city from its Palestinian environment. In so doing, it has continued to defy the advisory opinion rendered on 9 July 2004 by the International Court of Justice. The Government of the Syrian Arab Republic stresses that those actions all demonstrate that the goal of Israeli policy is to create a reality that would make the establishment of a viable Palestinian state impossible, undermining any possibility of a peaceful solution and prolonging the tension and conflict in the region. Syria stresses that the question of Jerusalem is fundamental and decisive for the realization of peace in the Middle East. Israel must comply, or be prevailed upon to comply, with the United Nations resolutions that emphasize the need to protect the particular legal status of Jerusalem as an occupied territory. Those resolutions state that any measures to alter the identity or situation of Jerusalem are invalid.